

F O I P A
M A N U A L

MEMO 44

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: FD-515 Accomplishment Report
Date: March 31, 1998

Attached is a copy of Bureau form FD-515 (Attachment 1-two samples) and FD-515a (Attachment 2). The FD-515 is used to record convictions, recoveries, and other FBI field office accomplishments credited to a particular investigation. The FD-515a, a supplemental page to the Accomplishment Report, is prepared when reporting an indictment and/or conviction of a subject of an Organized Crime Program case. At times, several FD-515a reports may be attached to the FD-515 since a supplemental page is required for each subject indicted and/or convicted.

When processing the FD-515, particular attention should be given to the "Investigative Assistance or Techniques (IA/T) Used" block located in the upper right corner of the form. The "IA/T" block lists various items of IA/T which are publicly known; however, opposite each item is a space for a numerical rating of each IA/T (from one to four) to record its assistance in the captioned investigation. If any IA/T block has a numerical rating assigned to it, all spaces adjacent to each activity under the word "rating" in all four columns should be redacted pursuant to Exemption (b)(7)(E). This will preclude disclosure of which activities were used and what ratings were awarded, while the list of activities remain visible.

In addition, the agent's social security number, located to the left of the "IA/T" block, should be redacted pursuant to Exemption (b)(7)(C).

The FD-515a supplemental page is generally releasable, although privacy issues may be considered if warranted.

FD-515 (Rev. 2-24-86)
ACCOMPLISHMENT REPORT
(Effective 10/1/85)
(Submit within 30 days from date of accomplishment)
TO: DIRECTOR, FBI

ST: SAC,

Bureau File Number
Field Office File Number
Squad or RA Number
Agent's Social Security No.

☐ If it is joint operation with:
(identity of other agency)
☐ If case involves
corruption of a public
official (Federal, State or
Local).

Date _____

Investigative Assistance or Technique Used							
Were any of the investigative assistance or techniques listed below used in connection with accomplishment being claimed? <input type="checkbox"/> No <input type="checkbox"/> Yes - If Yes, rate each used as follows: 1 = Used, but did not help 3 = Helped, substantially 2 = Helped, but only minimally 4 = Absolutely essential							
1. Acctg Tech Assistance	Rating	8. Eng. Sect. Type Exams	Rating	15. Photographic Coverage	Rating	22. Telephone Toll Recs	Rating
2. Aircraft Assistance		9. Hypnosis Assistance		16. Polygraph Assistance		23. UCO Group I	
3. Computer Assistance		10. Ident Div Assistance		17. Search Warrants Executed		24. UCO Group II	
4. Confidential Monitoring		11. Informant Information		18. Show Money Usage		25. UC Other	
5. ELSUR - PSC		12. Lab Div Exams		19. Surveil. Sec. (SOG) Asst		26. NCACV/VI-CAP	
6. ELSUR - Title III		13. Lab Div Field Support		20. SWAT Team Action		27. Visual Invest. Analysis (VIA)	
7. Eng. Sect. Field Support		14. Pen Registers		21. Tech. Agt. or Tech Equip			

Preliminary Judicial Process (Number of subjects)	Complaints	Informations	Indictments	D. Recoveries, Restitutions, or Potential Economic Loss Prevented (PELP)	(Explain valuation in remarks)			
				Property Type Code*	Recoveries	Restitutions	PELP Type Code*	Potential Economic Loss Prevented
B. Arrests, Locates, Summonses or Subpoenas Served (No. of Subj.)								
Subject Priority*								
A B C								
FBI Arrests -								
FBI Locates -								
Local Arrests -								
FBI Subj. Released: Armed								
Local Crim. Summons								
Release of Hostages or Children Located: (Number of Hostages or Children Located)				E. Civil Matters	Government Defendant			Government Plaintiff
Hostages Held By Terrorists: All Other Hostage Situations				Amount of Suit				
Missing or Kidnaped Children Located				Settlement or Award				
F. Final Judicial Process: Judicial District					Enter AFA Payment Here			

Subject Description Code*		Conviction		Combined Sentence		In-Jail		Suspended		Probation		Subject 3		Subject Description Code*		Conviction		Combined Sentence		In-Jail		Suspended		Probation	
Title	Section	Counts	Yrs	Mos	Yrs	Mos	Yrs	Mos	Yrs	Mos	Yrs	Mos	Title	Section	Counts	Yrs	Mos	Yrs	Mos	Yrs	Mos	Yrs	Mos	Yrs	Mos
<input type="checkbox"/> Felony													<input type="checkbox"/> Felony												
<input type="checkbox"/> Misdemeanor													<input type="checkbox"/> Misdemeanor												
<input type="checkbox"/> Plea													<input type="checkbox"/> Plea												
<input type="checkbox"/> Trial													<input type="checkbox"/> Trial												
<input type="checkbox"/> Pretrial Diversion													<input type="checkbox"/> Pretrial Diversion												
Total Fines \$												Total Fines \$													
Add consecutive sentences together. Enter longest single concurrent sentence. Do not add concurrent sentences together. Sentence 10 yrs.-6 yrs. susp. = 2 yrs. in-Jail.												Add consecutive sentences together. Enter longest single concurrent sentence. Do not add concurrent sentences together. Sentence 10 yrs.-6 yrs. susp. = 2 yrs. in-Jail.													
Subject 2 Subject Description Code*												Subject 4 Subject Description Code*													
Title Section Counts Yrs Mos Yrs Mos Yrs Mos Yrs Mos Yrs Mos Yrs Mos												Title Section Counts Yrs Mos Yrs Mos Yrs Mos Yrs Mos Yrs Mos Yrs Mos Yrs Mos													
<input type="checkbox"/> Felony												<input type="checkbox"/> Felony													
<input type="checkbox"/> Misdemeanor												<input type="checkbox"/> Misdemeanor													
<input type="checkbox"/> Plea												<input type="checkbox"/> Plea													
<input type="checkbox"/> Trial												<input type="checkbox"/> Trial													
<input type="checkbox"/> Pretrial Diversion												<input type="checkbox"/> Pretrial Diversion													
Total Fines \$												Total Fines \$													
Add consecutive sentences together. Enter longest single concurrent sentence. Do not add concurrent sentences together. Sentence 10 yrs.-6 yrs. susp. = 2 yrs. in-Jail.												Add consecutive sentences together. Enter longest single concurrent sentence. Do not add concurrent sentences together. Sentence 10 yrs.-6 yrs. susp. = 2 yrs. in-Jail.													

Attach additional forms if reporting final judicial process on more than four subjects, and submit a final disposition for (R-64) for each subject.

Remarks: (For every subject reported in Sections A, B or F above, provide name, DOB, race*, sex, and POB and SSAN if available.)

MEMO 44 - ATTACHMENT 1 (FRONT)
Sample 1

1 - Bureau
2 - Field Office
* See codes on reverse side

Sample 1

Property Type Codes*

Code No	Description
	Cash (U.S. and foreign currency)
	Stock, Bonds or Negotiable Instruments (checks, travelers checks, money orders, certificates of deposit, etc)
3	General Retail Merchandise (clothing, food, liquor, cigarettes, TVs, etc)
4	Vehicles (autos, trucks, tractors, trailers, campers, motorcycles, etc)
5	Heavy Machinery & Equipment (heavy equipment, computers, etc)
6	Bulk Materials (grain, fuel, raw materials, metals, wire, etc)
7	Jewelry (including unset precious and semiprecious stones)
8	Precious Metals (gold, silver, silverware, platinum, etc)
9	Art, Antiques or Rare Collections
11	Weapons or Explosives
20	All Other Recoveries (not falling in any category above)

Potential Economic Loss Prevented (PELP) Type Codes*

Code No	Description
22	Counterfeit Stocks, Bonds, Currency or Negotiable Instrument
23	Counterfeit or Pirated Sound Recordings or Motion Pictures
24	Bank Theft Scheme Aborted
25	Ransom, Extortion or Bribe Demand Aborted
26	Theft from, or Fraud Against, Government Scheme Aborted
27	Commercial or Industrial Theft Scheme Aborted
30	All Other Potential Economic Loss Prevented (not falling in any category above)

*Except for cash, the Remarks section must contain an explanation of the computation of the recovery value or loss prevented. An explanation airtel must accompany this report if the recovery is \$1 million or more, or if the PELP is \$5 million or more.

Subject Description Codes*

* Enter Description Code Only When Reporting a Conviction -

Organized Crime Subjects (Include Family Name Or Group):

- 1A Boss, Underboss or Consigliere
- 1B Capodecina or Soldier
- 1C Possible LCN Member or Associate
- 1D OC Subject Other Than LCN
- 1E Not a Member or Associate of LCN Family or OC Organization

Union Members:

- 5A International or National Officer
- 5B Local Officer
- 5C Union Employee

Known Criminals (Other Than OC Members):

- 2A Top Ten or I.O. Fugitive
- 2B Top Thief
- 2C Top Con Man

Government Officials Or Employees:

Federal

State

Local

Foreign Nationals:

- 3A Legal Alien
- 3B Illegal Alien
- 3C Foreign Official Without Diplomatic Immunity
- D U.N. Employee Without Diplomatic Immunity
- E Foreign Students
- 3F All Others

6A Presidential Appointee

6J Governor

6R Mayor

6B U.S. Senator

6K Lt. Governor

6C U.S. Representative

6L Legislator

6S Legislator

6D Judge

6M Judge

6T Judge

6E Prosecutor

6N Prosecutor

6U Prosecutor

6F Law Enforcement Officer

6P Law Enforcement Officer

6V Law Enforcement Officer

6G Fed Empl - GS 13 & above

6Q All Others - State

6W All Others - Local

6H Fed Empl - GS 12 & below

Bank Officers or Employees:

7A Bank Officer

7B Bank Employee

All Others:

8A All Other Subjects (not fitting above categories)

Terrorists:

- 4A Known Member of a Terrorist Organization
- 4B Possible Terrorist Member or Sympathizer

*If a subject can be classified in more than one of the categories, select the most appropriate in the circumstance.

Instructions

Subject Priorities for FBI Arrest or Locates:

- A - Subject wanted for crimes of violence (i.e. murder, manslaughter, forcible rape, robbery and aggravated assault) or convicted of such crimes in the past five years.
- B - Subjects wanted for crimes involving the loss or destruction of property valued in excess of \$25,000 or convicted of such crimes in the past five year
- C - All others

Claiming Non-Federal Arrests, Summonses, Recoveries or Convictions:

It is permissible to claim a local arrest, summons, recovery or conviction if the FBI significantly contributed to the accomplishment. A succinct narrative setting forth the basis for the claim must accompany this report. When claiming a local recovery, enter the word "LOCAL" to the right of the amount. Enter "LF" in the "In-Jail" block for all life sentences and "CP" for capital punishment sentences.

Reporting Convictions:

Convictions should not be reported until the sentence has been issued. There are two exceptions to this rule. The conviction information can be submitted by itself if:

- 1. The subject becomes a fugitive after conviction but prior to sentencing.
- 2. The subject dies after conviction but prior to sentencing.

An explanation is required in the Remarks section for either of the above exceptions.

Rule 20 Situations:

The field office that obtained the process (normally the office of origin) is the office that should claim the conviction, not the office where the subject enters the plea in cases involving Rule 20 of the Federal Rules of Criminal Procedures.

Investigative Assistance or Techniques (IA/Ts) Used:

-Since more than one IA/T could have contributed to the accomplishment, each IA/T used must be rated.

-The IA/T used must be rated each time an accomplishment is claimed. (For example - if informant information was the basis for a complaint, an arrest, recovery and a conviction and if separate FD-515s are submitted for each of the aforementioned accomplishments, the "Informant Information" block must be repeated on each FD-515 even if it was the same information that contributed to all the accomplishments.)

Codes:

C = Chinese; I = Indian/American; J = Japanese; N = Negro; O = All other; U = Unknown; W = White

PROPERTY CODES

01 Cash
02 Stocks, Bonds or Negot. Instruments
03 General Retail Merchandise
04 Vehicles
05 Heavy Machinery & Equipment
06 Aircraft
07 Jewelry
08 Vessels
09 Art, Antiques or Rare Collections
11 Real Property
20 All Other

SENTENCE TYPES

CP Capital Punishment
JS Jail Sentence
LS Life Sentence
NS No Sentence (Subject is a Fugitive, Insane, has Died, or is a Corporation)
PB Probation
SJ Suspension of Jail Sentence
YC Youth Correction Act

PELP CODES

22 Counterfeit
Stocks/Bonds/Currency/
Negotiable Instruments
23 Counterfeit/Pirated Sound
Recordings or Motion Pictures
24 Bank Theft Scheme Aborted
25 Ransom, Extortion or Bribe
Demand Aborted
26 Theft From or Fraud Against
Government Scheme Aborted
27 Commercial or Industrial
Theft Scheme Aborted
30 All Other

RACE CODES

A Asian/Pacific Islander
B Black
I Indian/American
U Unknown
W White
X Nonindividual

AGENCY CODES

ACIS Army Criminal Investigative Service
BATF Bureau of Alcohol, Tobacco & Firearms
BIA Bureau of Indian Affairs
DCAA Defense Contract Audit Agency
DCIS Defense Criminal Investigative Service
DEA Drug Enforcement Administration
DOC Department of Corrections
DOI Dept. of Interior
EPA Environmental Protection Agency
FAA Federal Aviation Administration
FDA Food and Drug Administration
HHS Dept. of Health & Human Services
HUD Dept. of Housing & Urban Development
INS Immigration and Naturalization Service
IRS Internal Revenue Service
NASA Nat'l Aeronautics & Space Admin
NBIS Nat'l NARC Border Interdiction
NCIS Naval Criminal Investigative Service
RCMP Royal Canadian Mounted Police
SBA Small Business Administration
USBP U.S. Border Patrol
USCG U.S. Coast Guard
USCS U.S. Customs Service
USDS U.S. Department of State
USMS U.S. Marshals Service
USPS U.S. Postal Service
USSS U.S. Secret Service
USTR U.S. Treasury
LOC Local
CITY City
COUN County
ST State
OTHER Other

JUDGMENT CODES

CJ Consent Judgment
CO Court Ordered Settlement
DF Default Judgment
DI Dismissal
JN Judgment Notwithstanding
MV Mixed Verdict
SJ Summary Judgment
VD Verdict for Defendant
VP Verdict for Plaintiff

JUDICIAL OUTCOME

AG Agreement
BR Barred/Removed
CC Civil Contempt
DC Disciplinary Charges
FI Fine
PI Preliminary Injunction
PR Temporary Restraining Order
PS Pre-filing Settlement
RN Restitution
SP Suspension
VR Voluntary Resignation
OT Other

SUBJECT PRIORITY

A Subject wanted for crimes of violence (i.e., murder, manslaughter, forcible rape) against another individual or convicted of such a crime in the past five years
B Subject wanted for crimes involving loss or destruction of property valued in excess of \$25,000 or convicted of such a crime in the past five years.
C All other subjects.

SUBJECT DESCRIPTION CODES

ORGANIZED CRIME SUBJECTS

1F Boss
1G Underboss
1H Consigliere
1J Acting Boss
1K Capodecina
1L Soldier

KNOWN CRIMINALS

2A Top Ten or I.O. Fugitive
2B Top Thief
2C Top Con Man

FOREIGN NATIONALS

3A Legal Alien
3B Illegal Alien
3C Foreign Official W/out
Diplomatic Immunity
3D U.N. Employee W/out
Diplomatic Immunity
3E Foreign Student
3F All Others

OTHERS

8A All Other Subjects
8B Company or Corporation

TERRORISTS

4A Known Member of a
Terrorist Organization
4B Possible Terrorist Member
or Sympathizer

UNION MEMBERS

5D President
5E Vice-President
5F Treasurer
5G Secretary/Treasurer
5H Executive Board Member
5I Business Agent
5J Representative
5K Organizer
5L Business Manager
5M Financial Secretary
5N Recording Secretary
5P Office Manager
5Q Clerk
5R Shop Steward
5S Member
5T Trustee
5U Other

GOVERNMENT SUBJECTS
(6F, 6G, 6H- Include Agency Code)

6A Presidential Appointee
6B U.S. Senator/Staff
6C U.S. Representative/Staff
6D Federal Judge/Magistrate
6E Federal Prosecutor
6F Federal Law Enforcement Officer
6G Federal Employee - GS 13 & Above
6H Federal Employee - GS 12 & Below
6J Governor
6K Lt. Governor
6L State Legislator
6M State Judge/Magistrate
6N State Prosecutor
6P State Law Enforcement Officer
6Q State - All Others
6R Mayor
6S Local Legislator
6T Local Judge/Magistrate
6U Local Prosecutor
6V Local Law Enforcement Officer
6W Local - All Others
6X County Commissioner
6Y City Councilman

BANK EMPLOYEES

7A Bank Officer
7B Bank Employee

Supplemental Page to the Accomplishment Report (FD-515) for Organized Crime Program (OCP) Matters Only

This supplemental page is required with the FD-515 reporting an indictment and/or conviction of a subject of an OCP case. A separate page is required for each subject indicted and/or convicted. The completion of Section A - D is mandatory. The other sections should be completed as applicable.

A. Name of Subject _____

B. Field Office _____ **Field Office File No.** _____

C. Criminal Activity - Indicate the primary criminal activity which resulted in the reported indictment and/or conviction. (Indicate only activity.)

<input type="checkbox"/> Labor Racketeering (LRK) (See Section E and G if applicable)	<input type="checkbox"/> Extortion (EXT)
<input type="checkbox"/> Corruption (COR) (See Section F if applicable)	<input type="checkbox"/> Loansharking (LNS)
<input type="checkbox"/> Illegal Gambling (IGM)	<input type="checkbox"/> Drugs (DRS)
<input type="checkbox"/> Other (OT), specify _____	

D. Organized Criminal Group

1. LCN: ☐ Member (MEM) ☐ Associate (ASO)

<input type="checkbox"/> BU	<input type="checkbox"/> KC	<input type="checkbox"/> NO	<input type="checkbox"/> NY - Luchese (LU)	<input type="checkbox"/> RC - Rochester
<input type="checkbox"/> CG	<input type="checkbox"/> LA	<input type="checkbox"/> NY - Bonanno (BO)	<input type="checkbox"/> PH	<input type="checkbox"/> SF
<input type="checkbox"/> CV	<input type="checkbox"/> MI	<input type="checkbox"/> NY - Colombo (CO)	<input type="checkbox"/> PX	<input type="checkbox"/> SO - San Jose
<input type="checkbox"/> DN	<input type="checkbox"/> NK - De Cavalcante	<input type="checkbox"/> NY - Gambino (GA)	<input type="checkbox"/> PG	<input type="checkbox"/> SL
<input type="checkbox"/> DE	<input type="checkbox"/> NE - New England - Patriarca	<input type="checkbox"/> NY - Genovese (GE)	<input type="checkbox"/> PI - Pittston - Bufalino	<input type="checkbox"/> TP

Position:

<input type="checkbox"/> Boss	<input type="checkbox"/> Consigliere (CNS)	<input type="checkbox"/> Capo (CPO)
<input type="checkbox"/> Underboss (UBS)	<input type="checkbox"/> Acting Boss (ABS)	<input type="checkbox"/> Soldier (SOL)

2. Other Non-LCN OC Groups, specify _____ ☐ Member (MEM) ☐ Associate (ASO)

E. Business Influenced/Affected (If applicable) Indicate below if the subject's criminal activity influenced or affected a particular trade industry:

<input type="checkbox"/> Toxic Waste (TW)	<input type="checkbox"/> Building Trades (BT)	<input type="checkbox"/> Entertainment (ET)	<input type="checkbox"/> Hotel/Restaurant (HR)
<input type="checkbox"/> Carting (CR)	<input type="checkbox"/> Meat/Poultry/Fish (MT)	<input type="checkbox"/> Garment (GR)	
<input type="checkbox"/> Vending (VN)	<input type="checkbox"/> Shipping (SH)	<input type="checkbox"/> Trucking/Trans (TT)	
<input type="checkbox"/> Other (OT) Specify _____			

Name of company subject connected with _____

F. Elected/Appointed Public Officials - Complete if subject was a public official at time of indictment and/or conviction. Indicate one each category.

Level - ☐ Federal (FD) ☐ State (ST) ☐ Local (LO)

Branch - ☐ Executive (EX) ☐ Legislative (LE) ☐ Judicial (JD)

Position/Title:

<input type="checkbox"/> Governor (GV)	<input type="checkbox"/> Mayor (MY)	<input type="checkbox"/> City	<input type="checkbox"/> House of Rep/ Staff (HR)	<input type="checkbox"/> Prosecutor (PR)
<input type="checkbox"/> Lt. Governor (LG)	<input type="checkbox"/> County Comm (CC)	<input type="checkbox"/> Senator/Staff (SE)	<input type="checkbox"/> Judge/Magistrate (JM)	<input type="checkbox"/> Law Enforcement Officer (LE)
<input type="checkbox"/> Other (OT), specify _____				

G. Union Members or Officials - If the subject was a Union member or official at the time of indictment and/or conviction, indicate the highest position the subject held/holds in the Union and the Union's name.

Name of Union _____

Union Affiliation:

<input type="checkbox"/> Teamsters	<input type="checkbox"/> Hotel and Restaurant Employee	<input type="checkbox"/> Laborers International	<input type="checkbox"/> Longshoremen's Association
<input type="checkbox"/> Other, specify _____			

Level - ☐ International ☐ Conference ☐ Council ☐ Local - Local No. _____

Position:

<input type="checkbox"/> Pres (PR)	<input type="checkbox"/> Sec/Treas (ST)	<input type="checkbox"/> Repr (RP)	<input type="checkbox"/> Fin Sec (FS)	<input type="checkbox"/> Clerk (CL)	<input type="checkbox"/> Trustee (T)
<input type="checkbox"/> Vice Pres (VP)	<input type="checkbox"/> Ex Brd Memb (EB)	<input type="checkbox"/> Orgzr (OR)	<input type="checkbox"/> Rec Sec (RS)	<input type="checkbox"/> Shop Stew (SS)	
<input type="checkbox"/> Tres (TR)	<input type="checkbox"/> Bus Agt (BA)	<input type="checkbox"/> Bus Mgr (BM)	<input type="checkbox"/> Off Mgr (OM)	<input type="checkbox"/> Memb (ME)	
<input type="checkbox"/> Other (OT), specify _____					

**Supplemental Page to the Accomplishment Report (FD-515)
for Organized Crime/Drug (OC/Drug) Program Matters or
Violent Crimes/Major Offenders (VCMO) Program Matters
relating to street gangs involved in drugs.**

This supplemental page is required with the FD-515 when a field office has either disrupted or dismantled an organization under the OC/Drug Program or the VCMO Program relating to street gangs involved in drugs.

Subject Name: _____

Field Office File Number: _____

- A. For the Subject identified on Section "L" of the FD-515, was the Subject's Role in the Organization/Enterprise (check only one): **Mandatory**

☐ Leadership ☐ Associate/Member ☐ Other

- B. The investigative efforts resulted in the (check only one): **Non-Mandatory**

☐ **Disruption** of a Drug Organization/Criminal Enterprise

or

☐ **Dismantlement** of a Drug Organization/Criminal Enterprise

Note: A disruption should only be claimed once per event.
A dismantlement should only be claimed once per organization.

- C. As to the Organization/Enterprise Disrupted or Dismantled, the scope of the Organization/Enterprise was (check only one): **Only Check if B was Claimed**

☐ International ☐ National ☐ Regional ☐ Local

- D. Case file serial(s) in which disruption/dismantlement is documented: _____

Definitions

- A. **Disruption** occurs when the normal and effective operation of a specific enterprise is significantly impacted as a result of an affirmative law enforcement action, including (but not limited to) the indictment/conviction of the organization's leadership. A substantial seizure of the organization's assets may constitute a Disruption if the organization's operations are significantly impacted by the event.
- B. **Dismantlement** occurs when an organization's structure is removed to the extent that it no longer operates as a coordinated organized criminal enterprise, and that removal is a result of an affirmative law enforcement action as outlined above. Further, if any components of the organization remain, their ability to re-form into another such organized criminal enterprise is not possible for an extended period of time.
- C. As to the scope, although the membership of an organization/enterprise may have contacts or relationships with persons or entities in other countries, regions or states, Section C describes the primary scope of operations and influence of the organization/enterprise. "International" and "Local" Organizations/Enterprises are self-explanatory. "Regional" Organizations/Enterprises are multi-state (or multi-metropolitan area in a large state). "National" Organizations/Enterprises are multi-region.
- D. May be any case file communication or document describing the events resulting in the reported disruption/dismantlement, and the nature of the organization/enterprise as contained in Sections B and C.

Note:

Divisions currently are to communicate significant investigative developments (such as disruptions/dismantlements) to FBIHQ substantive units.

F O I P A

M A N U A L

MEMO 45

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: FD-761 Public Corruption Data Transmittal Form
Date: March 31, 1998

Form FD-761 was previously utilized for statistical purposes by the Public Corruption Unit, Criminal Investigative Division. However, the use of this form was terminated in 1995. Since the form is no longer in use, it would be difficult to articulate harm or risk of circumvention of the law. Therefore, none of the information contained on this form is exempt pursuant to (b)(7)(E).

In certain instances, the code asserted for the subject (public official) in item number 6 of the form may warrant protection pursuant to (b)(7)(C).

F O I P A

M A N U A L

MEMO 46

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Fugitive Requesters
Date: March 31, 1998

The issue of FOIPA requests from or on behalf of fugitives was decided in Doyle v. United States Department of Justice, 668 F.2d 1365 (D.C. Cir. 1981). Invoking the equitable doctrine that "those who demand equity must come into court with clean hands," the court ruled that a fugitive cannot seek assistance from the courts in his FOIPA claim because he has removed himself from the jurisdiction of the courts. Thus, FOIPA requests from fugitives should be denied the release of any material and the request suspended at the outset.

Procedures for Handling a FOIPA Request Involving a Fugitive

b2 When reviewing files responsive to a FOIPA case which may involve 88 classifications or information contained in any security or criminal investigative file, the LT or PLS should immediately determine if the fugitive requester has been apprehended and the status of the overall case. In some instances, it may be necessary to contact the **Violent Crimes/Fugitive Unit on extension** to obtain this information. If determined that the subject has been apprehended and the case is closed, the file or information may be processed under normal guidelines. However, if the subject is still considered a fugitive, then the file(s) should not be released to the requester. The LT/PLS should advise the Team Captain and/or the Unit Chief and, if not already done, the Fugitive Unit should be notified and provided with all pertinent information pertaining to the FOIPA request. A response to the fugitive requester will be determined on a case-by-case basis.

The following is an excerpt of the response which was made in the aforementioned Doyle v. DOJ lawsuit:

"In view of the fact that (subject's name) remains in a fugitive status, a determination has been made that it would be improper for this Agency to make any records pertaining to your client available pursuant to the Freedom of Information and Privacy Acts, and therefore, this office is suspending further processing. This condition can be remedied by the resolution or termination of (subject's name) fugitive status."

"This response is not a denial of records. However, if you construe this response to be a denial, you may appeal . . . "

~~SECRET~~

F O I P A

M A N U A L

MEMO 47

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: [REDACTED] Liaison with
Date: May 15, 1998

b7D

b7D

and the [REDACTED]

b1.

(S)

All information concerning the above foreign law enforcement agencies is to be classified "Secret" in accordance with Executive Order 12958, Sections 1.5 and 1.6(b)(5), (d)(6) and Section 3.4(6). (U)

5/15/98
CLASSIFIED BY: SP7-CJ
REASON: 1.5 (B,D)
DECLASSIFY ON: X5, 6

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

~~SECRET~~

F O I P A
M A N U A L

MEMO 48

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: High Visibility Electronic Communications (ECs)
Date: March 31, 1998

Purpose: A High Visibility EC is prepared by a PLS prior to a release of documents in cases where the release is likely to result in publicity. The memo is brief in content but contains enough information to inform the OPCA Front Office and the Director's Office of possible publicity and the resulting inquiries from the press and/or public.

High visibility ECs are notices of proposed action and not requests for approval. They should include language to the effect that the release will be made upon return of the communication. Please do not include language indicating that the release will be made upon approval. The FOIPA Section Chief is to be notified upon return of the communication with an indication evidencing the fact that it has been read in the OPCA Front Office and/or the Director's Office.

When to prepare High Visibility Communications:

High visibility ECs are prepared whenever:

A) the requester is:

1. A current high Government official, i.e., President, Vice President, Cabinet Level official, Supreme Court Justice, House and Senate leadership, Chairman or ranking members of a committee having oversight of the FBI, the Assistant Attorney General and above in the Department of Justice and United States Attorneys.
2. Any other individual who may have personal contact with a high level FBI official.
3. Persons who may be high profile public figures, e.g., Presidential candidates, civil rights leaders, corporate or union leaders.
4. Any other requester who has received recent substantial press notoriety.

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High Visibility Electronic Communications (ECs)

B) the FOIPA release may result in the accusation of improper FBI activities.

C) whenever the requester has the ability and intent to disseminate information to the public (typically requesters associated with the media, authors or journalists) and the subject matter:

1. Is or was a person in the public eye, e.g., public officials, entertainers, sports figures, persons prominently associated with a course or movement, etc.
2. Is controversial, derogatory, or shows improper activity on the part of the subject not previously known.
3. Relates to FBI internal administrative matters, e.g., use of representation funds, Office of Professional Responsibility summaries, shooting incident reports, schedules or telephone logs of high Bureau officials, or disclose the individual activities of the Director or other Bureau officials.
4. Has received recent publicity.
5. The request involves a deceased Congressman or other significant political figure. (It is OPCA's policy to contact the next of kin, advising of the release and providing a copy of the release. Therefore, one week prior to the release to the requester, a copy of the release package should be forwarded to [REDACTED] OPCA, Room 7240, for delivery to the next of kin.)

b6
b2
If the need for the high visibility is questionable, contact [REDACTED] for requests involving political figures on extension [REDACTED] or [REDACTED] on extension [REDACTED] for all other matters.

Information to include in the EC:

The EC should be limited to one or two pages and include the following:

- 1) The identity of the requester.
- 2) The subject of the request.
- 3) The date of the request.
- 4) The number of pages to be released.

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High Visibility Electronic Communications (ECs)

- 5) A brief summary of the material processed and the type of classification, i.e., Bank Robbery, Special Inquiry, etc. (Do not include the actual file number or caption of the investigation.)
- 6) A statement on whether or not derogatory information was found in material processed and, if so, a brief description of the derogatory information.
- 7) A characterization of the exemption(s) asserted, e.g., "unwarranted invasion of personal privacy" instead of "(b)(7)(C)."
- 8) Language indicating that the release will be made once the EC is returned to the FOIPA Section.

Approval Process for the EC:

Prior to preparing an EC in final form, a rough draft is to be submitted to the PLS's Team Captain, Unit Chief, the Public Information Officer and the FOIPA Section Chief for any revisions.

F O I P A
M A N U A L

MEMO 49

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Historical Processing of FBI Documents under the FOIA
Date: March 31, 1998

The policy of the FOIPA Section for processing historical FBI cases under the FOIA is governed by the guidelines as set forth in 28 CFR 50.8 and the agreement with the National Archives and Records Administration (NARA) dated 9/4/84, which authorizes the transfer of files to NARA for permanent retention.

Any file in which the last serial is dated more than 50 years ago will be presumptively historical. It is noted that there will be cases which will qualify for historical processing well before the 50 years and approval for such processing will be given on a case-by-case basis by the Section Chief or the Public Information Officer.

In processing historical files, as defined above, **only the first clause of Exemption (b)(7)(D)** will be implemented in order to protect the identity of sources of information, including institutional sources, and/or informants with either an implied or express promise of confidentiality, but only to the extent that the information would tend to identify those individuals and/or institutions. **On rare occasions the second clause may be applied**, however, where the information would not harm or identify the source, it should be released.

Information will continue to be protected which is exempt from disclosure by another statute or which is properly classified. In addition, **Exemption (b)(2)** will only be asserted to protect permanent symbol source numbers and T-symbols in conjunction with (b)(7)(D).

Exemption (b)(5) should not be used to protect the internal deliberative process. Likewise, it is difficult to imagine investigative techniques, unless classified, which continue to warrant protection today; therefore, assertions of **Exemption (b)(7)(E)** is unlikely.

Requests for 50 year old documents concerning an individual for whom there is no evidence of death or notarized authorization will continue to receive third party live responses unless the individual would be more than 100 years old at the time of the request. Any individual known to be 100 years old or older will be presumed dead and should not be afforded any privacy protection under Exemptions (b)(6) or (b)(7)(C).

The privacy rules for third parties mentioned in any high profile investigation being processed under historical guidelines will be determined on a case-by-case basis. The age of the

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Historical Processing of FBI Documents under the FOIA

document/information being processed will be a critical factor in this decision as well as if the investigation received wide publicity. The decision to release names and information pertaining to third parties mentioned in the file should be discussed between the PLS and the Team Captain and must have the approval of the Section Chief.

F O I P A
M A N U A L

MEMO 50

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Hoover's Official and Confidential Files (O & C Files)
Date: March 31, 1998

b6 J. Edgar Hoover's Official and Confidential (O&C) files are currently preprocessed and have been the subject of litigation with FOIPA requester, [REDACTED]. The O&Cs consist of 164 "folders" on various individuals and topics. There is also a folder which contains the numerical listing of these individuals and topics.

The O&Cs are indexed to the central records system by use of file number 62-116606-1. This number corresponds to Hoover's index boxes which contain hundreds of index cards and is maintained in the Special File Room (SFR) along with the 164 folders.

When this file number appears on the search slip, it's an indication that your subject is indexed to the O&Cs. At this point, send the search slip (the same one that came back from the 190 Processing SubUnit with the 62 number listed) to the SFR with a notation that you need search results of 62-116606-1 to be listed on the attached search slip. SFR will conduct a search of 62-116606-1 and will write on the bottom of the search slip exactly what appears on the index card(s). Subsequently, the SFR will determine where your subject is located in the O&C files by using the information on the search slip and the numerical listing of the folders. Once located, the SFR will provide the pertinent folder(s) to the LT or PLS who will review the material to determine if it's identifiable to the subject matter. If the LT or PLS determines the material to be identifiable, it will be necessary to obtain a copy of and review the preprocessed O&C material located in the FOIPA Reading Room.

When determining fees to be assessed or when processing a case, it is important not to overlook 62-116606-1 because documents in the O&C file may be duplicate of regular Bureau file material or the O&C material may qualify as a main file or a main file equivalent.

F O I P A
M A N U A L

MEMO 51

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: House Select Committee on Assassinations
Date: March 31, 1998

House Select Committee on Assassinations
(HQ File 62-117290)

The FBI was previously in litigation with requester, Mark Allen, for all material provided to the House Select Committee on Assassinations (HSCA) concerning its investigation into the assassination of President Kennedy. The House of Representatives joined the litigation in an attempt to claim Congressional privilege for all of the material connected to the HSCA investigation. This included all correspondence between the FBI and HSCA, as well as internal FBI communications. The HSCA's position was that these materials, as well as materials concerning its investigation of the assassination of Martin Luther King, are congressional documents and not agency records. (It is noted that the HSCA investigation of the assassination of Martin Luther King was not in litigation.)

b6 Questions concerning any material contained in Bufile 62-117290, or duplicate documents which may be unrecorded in other Bureau files, should be directed to [REDACTED] prior to any disclosure of material.

Processing of Material Pertaining to La Costa Nostra Figures

In connection with the investigation of the HSCA, and the request of Mark Allen for information provided to the HSCA, voluminous material was released pertaining to La Costa Nostra (LCN) figures.

b6 Employees who are processing a file containing information concerning any LCN figure should contact [REDACTED] to determine if and/or obtain any material which may be in the public realm.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Identification Records (Rap Sheets), NCIC and Interstate Identification Index (III) Printouts
Date: March 31, 1998

Identification Records of First Party Individuals

When processing a first party request, identification records (rap sheets), NCIC printouts and Interstate Identification Index (III) printouts located in FBI files pertaining to the requester should be released and the disclosure letter should include the following paragraph:

"The enclosed documents from our Central Records System (CRS) files contain a copy of an identification record or "rap sheet." We have released this rap sheet as it existed when it was placed in the CRS file; it may or may not reflect current information. If you want an up to date copy of the rap sheet, please comply with the instructions set forth on the enclosed copy of Attorney General Order 556-73. Fingerprint impressions are needed for comparison with records in the Criminal Justice Information Services (CJIS) Division to ensure that an individual's identification record is not disseminated to an unauthorized person."

A copy of Attorney General Order 556-73 is attached.

Identification Records of Third Party Individuals

Please keep in mind that if the identification record, NCIC or III printout belongs strictly to a third party and it is not known if that person is deceased, it will be assumed he or she is living. In such cases, the identification record should automatically be withheld pursuant to Exemptions (b)(6) and/or (b)(7)(C). On the other hand, if the individual is deceased, it should be released in its entirety.

NCIC Message Keys and ORI Numbers

Identification records (rap sheets), NCIC and III printouts may contain NCIC Message Keys and/or Originating Agency Identifier (ORI) numbers. These message keys and ORI numbers do not warrant protection pursuant to a FOIPA exemption.

A Message Key is a two-or three-character designator which identifies the type of entry or

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Identification Records (Rap Sheets), NCIC and III Printouts

query sent. Although there are over 75 keys in present use, they will typically begin with the alpha characters "C" (Clear or Cancel), "E" (Enter), "M" (Modify), "O" (query), "X" (Clear), or "Z11" (Test). All letters in a Message Key are capital letters, and they generally appear at the beginning of a message. They often follow the entry code "MKE/", although they also appear in other places, such as in a header line, separated from the ORI by a period. (Note: the MKE/ code may also be followed by a narrative description of a message key for responses from system records.)

An ORI is a nine-character entry which identifies the agency entering the message, or another agency related to a previous NCIC message or event. ORIs begin with a two-letter state code, but may end in either a numeric or alphabetic character. They may or may not follow the entry code "ORI". They commonly appear in three places:

- 1) the beginning of a record, representing the agency requesting a record;
- 2) in the body of a record, representing the agency which entered the record; and
- 3) in an III record, following identification of an arrest event, representing the arresting agency.

Due to variances in state and federal system formats, the positions of message keys and ORIs may vary from record to record. In addition, anticipated changes in the NCIC system may create similar codes (An example is the proposed "CTI" identifier for courts issuing warrants.) The examples provided below are typical of how the codes may appear as discussed above:

- 1.) 2L0102077MJM OH DCFBIWA36 NAM/ [REDACTED]
- 2.) 7L0102077MJM
DCFBIWA36
THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAME/ [REDACTED] SEX/M RAC/W DOB [REDACTED]

NAME [REDACTED] FBI NO. [REDACTED] INQUIRY DATE
10/25/90

FINGERPRINT CLASS
PO PI CO PO PM
PI PM 10 PI 13

ALIAS NAMES
[REDACTED]

IDENTIFICATION DATA UPDATED 10/16/90

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Identification Records (Rap Sheets), NCIC and III Printouts

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE

FOLLOWING:

FBI

-FBI

b6

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX
BY USING THE APPROPRIATE NCIC TRANSACTION.
END

3) QW.DCFBIWA36.NAM/BADGUY,JOHN T.DOB/010101

DCFBIWA36

NO NCIC WANT DOB/010101 NAM/BADGUY,JOHN T

RULES AND REGULATIONS

(Order 556-73)
PART 16-PRODUCTION OR
DISCLOSURE OF
MATERIAL OR
INFORMATION

Subpart C-Production of FBI
Identification Records in
Response to Written
Requests by Subjects Thereof

By order dated September 24, 1973, the Attorney General of the United States directed that the Federal Bureau of Investigation, hereinafter referred to as the FBI, publish rules for the dissemination of arrest and conviction records to the subjects of such records upon request. This order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, satisfactory proof of identity of the person whose identification record is requested and a processing fee of \$18.00.

Since the FBI Identification Division is not the source of the data appearing in identification records, and obtains data thereon from fingerprint cards or related identification forms submitted to the FBI by local, state, and federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data require that the subject of an identification record make application to the original contributing agency in order to correct the deficiency complained of.

The relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable because the material contained herein relates to the interpretation of 28 U.S.C. 534 as allowing the granting of an exemption to subjects of identification records and relief of prior administrative restrictions on dissemination of such records to them. Furthermore, it is deemed in the public interest that there be no delay in effective date of availability of identification records to the subjects thereof.

By virtue of the order of the Attorney General, dated September 24, 1973, and pursuant to the authority

delegated to the Director, FBI by 28 CFR 0.85(b), Part 16 of 28 CFR Chapter I, is amended by adding the following new Subpart C:

§ 16.30 Purpose and scope

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record

An FBI identification record, often referred to as a "rap sheet", is a listing of certain information taken from fingerprint cards submitted to and retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprint cards submitted in connection with Federal employment, naturalization, or military service. The identification record includes the name of the agency or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards, disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Identification Division is not the source of the arrest data reflected on an identification record.

§ 16.32 Procedure to obtain an identification record

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to ~~the FBI Identification Division, Washington, D.C. 20537-9700, or to the nearest FBI office.~~
~~the FBI Identification Division, Washington, D.C. 20537-9700, or to the nearest FBI office.~~
~~the FBI Identification Division, Washington, D.C. 20537-9700, or to the nearest FBI office.~~
~~the FBI Identification Division, Washington, D.C. 20537-9700, or to the nearest FBI office.~~
~~the FBI Identification Division, Washington, D.C. 20537-9700, or to the nearest FBI office.~~
accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-in ink fingerprint impressions placed upon fingerprint cards or forms

commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

§ 16.33 Fee for production of identification record

Each written request for production of an identification record must be accompanied by a fee of \$18.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigence.

§ 16.34 Procedure to obtain change, correction or updating of identification records

If, after reviewing his/her identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his/her challenge as to the accuracy or completeness of any entry on his/her record to the Assistant Director of the FBI Identification Division, Washington, D.C. 20537-9700. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency.

* FBI
CJIS Division
Attn: SCU, Mod. D-2
1000 Custer Hollow Road
Clarksburg, West Virginia 263

Published in the Federal Register on 11/28/73; amended on 10/27/78, 10/27/81, 8/8/83, 5/6/86, 5/17/91, and 1/3/95.

F O I P A
M A N U A L

MEMO 53

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Immigration and Naturalization Service (INS)
Date: March 31, 1998

INS Lookout and Stop Notices
for NAILS And OASIS

INS Lookout and Stop Notices regarding the National Automated Immigration Lookout System (NAILS) and the Operational Activities Specific Information System (OASIS) should be referred to INS before acknowledging the existence of this material to the requester. INS policy, in most instances, is to neither confirm nor deny the information to first and third party requesters.

Referrals From INS Containing "Tentative Index Card" Documents

Many referrals from the INS consist of only "TENTATIVE IDENT" index cards and the fingerprint classifications shown thereon which may or may not be identifiable with the subject of the request. Any such referrals sent to FBIHQ will be handled in RMU.

In responding to the requester concerning these INS referrals, the following two paragraphs should be utilized:

"This is in reference to your Freedom of Information-Privacy Acts (FOIPA) request sent to us from the Immigration and Naturalization Service (INS)."

"The INS referred information originating with the FBI Criminal Justice Information Services (CJIS) Division (formerly known as the Identification Division) which may or may not be identifiable with the subject of your request. In order to access CJIS Division records responsive to your request, you will have to comply with the enclosed instructions set forth in Attorney General Order 556-73. Fingerprint impressions are needed for comparison with records in the CJIS Division to insure that an individual's record is not disseminated to an unauthorized person."

In closing the case, the FOIPA computer sheet should be closed by checking the "Miscellaneous" box (item number 9) from block 17 along with the date being closed, then the notation "Ident Pitch sent" should be written in block 15.

F O I P A

M A N U A L

MEMO 54

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Informant Files, Requests for
Date: March 31, 1998

Establishing an Informant

I. Background:

An informant is defined as any person or entity who furnishes information to the FBI on a confidential basis. (MIOG Section 137-1). Although many informants are able to furnish information because they are criminals themselves or are directly involved with criminals, others, such as confidential sources, are not criminals or involved in criminal activities. Confidential sources are defined as those who provide information to the FBI on a regular basis as a result of legitimate employment or access to records, not as a result of association with persons of FBI investigative interest. [(MIOG Section 137-1.1(7)] Thus, an "informant" can be a hardened criminal, an honest office worker who happens to have access to relevant records, or a high-level official who would be appalled to learn he had been characterized as an "informant." The hardened criminal, of course, normally becomes an informant because he expects to benefit from the relationship, such as by receiving payment for information or a reduction of pending charges against him. The high-level official would likely offer his services out of a sense of duty and would probably refuse any payment for information provided.

Informants should not be confused with Cooperative Witnesses. A Cooperative Witness is an individual who, on a continuing basis and under the direction of an agent, contributes substantial operational assistance to the resolution of a case through active participation in the investigation. Although that individual's relationship with the Government is concealed until testimony is required at trial, he is treated as a witness and not opened as an informant. (MIOG Section 137-1.2.)

When a field agent recognizes that an individual has informant potential, he opens an informant file for the purpose of conducting a "suitability and pertinence inquiry." This inquiry, usually completed within 120 days, is intended to determine the suitability of the person as an informant and the pertinence of the information he is likely to provide. At the end of the inquiry, the field supervisor must make a written finding whether the individual should be converted to an operational informant. If the case is closed because the individual is not suitable for an informant, all information volunteered by the individual regarding his background and substantive matters

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Informant Files, Requests for

may be retained by the field office, however, current procedures require the field office to destroy all other information regarding the individual which was obtained without his consent. [MIOG Section 137-3.1.3(2)] If the individual is certified as an operational informant, the field agent gives the informant a number of admonishments regarding his status and activities, which usually clearly indicates that the FBI considers the individual an informant. Confidential Sources are given only a few admonishments which may not clearly indicate their status.

Only a small portion of the considerable paperwork which is generated in the field will be included in the FBIHQ informant file. In general, the FBIHQ file will contain only records of an administrative nature: the opening communication, the communication which converts the individual's status to that of a certified operational informant, requests from the field for funds to operate the informant, and communications concerning problems with the informant such as unauthorized criminal activity. The field office file, on the other hand, contains not only the administrative information, but also detailed substantive information received from the informant pertaining to crimes. This substantive information, generally contained in an FD-306 or FD-209, may be summarized in a communication to FBIHQ requesting funds to pay the informant, so at least some substantive information will be found in the FBIHQ file.

In order to avoid security problems inherent in the transmittal of informant files between offices, an informant file is generally processed for FOIA purposes by the office where it is located: field office files are processed by the field and FBIHQ files are processed by FBIHQ. This procedure can be changed only in exceptional cases and with the approval of the Section Chief. The classifications which should be processed as informant type files are: 134, 137, 170 (obsolete) and 270. The PLS should be alert for any informant information in the main investigative file which is also contained and being protected in the main informant file.

Processing Guidelines for Informant Files

Given the background circumstances, the processing guidelines which follow are meant to accomplish the following ends: 1) to protect the safety of informants who have submitted FOIPA requests under duress or who do not appreciate the dangers inherent in their requests; 2) to protect the viability of the informant program; 3) to protect the privacy of third parties named in informant files; 4) to protect ongoing investigations; 5) to protect the techniques involved in developing, operating, and evaluating informants; and 6) to avoid alienating confidential sources. The guidelines are not rules which must be followed even when the facts of an exceptional case require a different approach: they are some functional frameworks in which most informant file requests can be handled with the aforementioned goals in mind. Unusual cases should be referred to a FOIPA Section Supervisor and/or the substantive Division for advice.

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Informant Files, Requests for

II. First Party Requests:

A) Requester's Incarcerated:

If the requester is incarcerated and has not specifically requested his informant file [REDACTED]

b2 [REDACTED] if the requester specifically mentioned his informant file in the request letter, the procedures in paragraph (C) should be followed after discussion with the Team Captain and/or Unit Chief.

B) Requester is Not Aware of "Informant" Status:

b2 If the requester is not incarcerated and is unaware of his status as an informant or of the existence of his informant file, [REDACTED]

[REDACTED] In essence, the requester should be treated as a Cooperative Witness: the information he furnished should be processed using the pertinent exemptions [i.e., exemptions (b)(2), (b)(7)(A), (b)(7)(C), and (b)(7)(E)] except for exemption (b)(7)(D). Determining that a requester is unaware of his status as an informant is a matter of judgment. Some factors which may lead to such a conclusion are the following: 1) the requester was never certified as an operational informant; 2) the requester never furnished any information of value; 3) the requester was never paid, or never signed anything as an informant; 4) the informant file contains only a few serials; and 5) the requester's letter does not specifically indicate a desire for his informant status, his informant file or the confidential information he provided to the FBI.

C) Requester is Aware of "Informant" Status:

If the requester is not incarcerated and is aware of his status as an informant or the existence of his informant file, the field office which operated the informant should be notified of the request [REDACTED]

b2 The outgoing FOIPA Section's electronic communication to the field should advise the [REDACTED]

b2 [REDACTED] and coordinate the matter with the [REDACTED]

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Informant Unit.

D) Informant Status Officially Confirmed:

If the requester is not incarcerated, is aware of his informant status/file, and he advises the request was submitted voluntarily, then a determination must be made as to whether the requester's informant status has been officially confirmed such as through testimony in open court or an official media release. When there has been no such official confirmation, the full range of applicable exemptions, to include exemption (b)(7)(D), can be used to avoid confirming the informant's status by the release. When there has been official confirmation through testimony or an official media release, the information which was publicly disclosed and which can be identified as such in FBI records is subject to release; the remaining information should be processed using the full range of relevant exemptions.

III. Third Party Requests:

If information about or from an informant is requested by a third party, the Case Agent handling the informant should be advised at once.

After first considering the (c)(2) exclusion, all of the potentially applicable FOIA exemptions should be considered. If an informant has been officially disclosed, only information concerning his identity as an informant and information about others which has been previously disclosed will be provided to the requester.

IV. The Exemptions:

In addition to the manner in which the FOIA exemptions are normally used, the following applications should be considered for informant files:

Exemption (b)(2) may be used to protect informant symbol numbers, informant code names, and the designation "informant" or its equivalent in a file. This exemption would be most useful in those situations where the requester was not yet aware that he was being considered to become an informant or when his informant status has not been officially confirmed.

Exemption (b)(7)(A) may be used if disclosure would reveal the direction of, or otherwise interfere with, a pending investigation. This may occur, for instance, when a report of an informant interview includes only some of the information furnished by the informant. The selective inclusion of information in the report may reveal the focus or direction of an investigation. Since even a thorough review of a file may not indicate whether disclosure could reasonably be expected to interfere with an investigation, it is recommended that the PLS discuss the matter with the case agent for the informant or investigation in question.

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Exemption (b)(7)(C) may be used to protect the privacy rights of third parties mentioned in an informant file. Although one factor weighing in favor of disclosure is the public interest in ensuring that information is recorded properly in government files, the other side of the balance, at least where the informant receives some form of consideration or payment for the information, will include the notion that the proprietary right to that information has passed from the informant to the government. That factor, when combined with the traditional privacy concerns inherent in such information, will usually outweigh the factors favoring disclosure, especially in light of the Supreme Court decision in Reporters Committee for Freedom of the Press v. Department of Justice.

As mentioned in Section II part D of this memo, the first clause of exemption (b)(7)(D) should be used when the requester's informant status has not been officially confirmed. Thus, we would withhold any information which could reasonably be expected to disclose that the requester had been an informant. When the requester's informant status has been officially confirmed, exemption (b)(7)(D) can be used to withhold any information which could reasonably be expected to disclose that the requester had been an informant on matters which were not disclosed in the "official confirmation." Exemption (b)(7)(D) would also apply to information which had been provided by others on a confidential basis such as information provided by a local police department concerning the informant's criminal activities. It should be noted, however, that much of the substantive information provided by the requester will be withheld under exemption (b)(7)(C).

Exemption (b)(7)(E) may be used to protect FBI techniques involved in developing, operating, and evaluating informants which are not well known to the public.

Exemption (b)(7)(F) may be used to protect the physical safety of any individual, including the informant/requester.

b2 In a particularly sensitive case, additional measures [REDACTED] could be considered. Such action should only be taken after careful consideration and only with the approval of the Unit Chief and/or Section Chief personnel.

b2 Finally, the Criminal Informant (Ext. [REDACTED] Room [REDACTED] Witness Security Programs Unit (Ext. [REDACTED] Room [REDACTED] should be consulted prior to disclosing any information concerning an informant.

F O I P A
M A N U A L

MEMO 55

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: [REDACTED]
Date: March 31, 1998

b2/b7E

b2
b7E The [REDACTED] is an extremely vital and sensitive program the existence of which is protectable under Exemptions (b)(1) and (b)(7)(E). The program is further characterized in the following excerpt from a R. M. Bryant Memorandum to Mr. Baugh dated 3/28/94:

b2
b7E "As the lead agency for counterterrorism within the U.S., the FBI has developed and implemented an [REDACTED] to reduce the threat of terrorist violence [REDACTED]. The objective of this proactive FBI project (as defined by Executive Order 12656, signed by former President Reagan on 11/18/88) is to identify [REDACTED] where necessary, and by doing so, to facilitate the protection of the U.S. infrastructure."

"Our infrastructure is defined as a system of interdependent networks [REDACTED]

b2
b7E [REDACTED]

b2
b7E [REDACTED]

"It is important to note that although individual assets can be advised of their designation, the comprehensive list cannot be disseminated in its entirety outside the FBI. This restriction is based on the security classification [REDACTED]

b2
b7E

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9-2-98 BY [signature]

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[REDACTED]

b2/b7E

b2
b7E

[REDACTED]

"If you have any further questions, do not hesitate to contact the Counterterrorism Section, Counterterrorism Planning Unit, National Security Division, at extension [REDACTED]"

b2

F O I P A
M A N U A L

MEMO 56

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Institutional Sources and Information Provided by Them
Date: March 31, 1998

On May 24, 1993, the Supreme Court issued a ruling in the civil litigation of DOJ vs. Landano that had a significant impact in regard to the protection of confidential law enforcement sources under exemption (b)(7)(D). The Supreme Court's decision basically stated that a confidential relationship cannot be inferred with every individual or institution contacted by the FBI during the course of a criminal investigation. As such, one difficult area that was affected in the Landano ruling was the protection of institutional sources, i.e., commercial and financial institutions, especially where the information provided by such a source is of a "routine" nature.

However, there are certain circumstances in which we may be able to demonstrate implied confidentiality where the focus is on the nature of the information provided, and the proposition that, where an institution provides information that the subject would not want given out, it may be concluded that the institution was doing so with a tacit understanding of confidentiality.

The approach in this regard would be to infer that an institution providing information to a federal law enforcement agency is acting with implied assurances of confidentiality whenever it is providing information that it would not normally make available to the public. The FBI may be able to support such an approach if it can demonstrate that particular sources or categories of sources are known to have policies restricting the public dissemination of the type of information in question. In this respect, the courts may take a narrower view of implied confidentiality in this context, and may be willing to find implied confidentiality only where the information provided is of a sensitive nature. Examples of communications where we may be able to characterize as "confidential" under this theory include the following:

1. Institutions providing financial information about the subjects of investigations, other persons suspected of involvement in criminal activities, or criminal organizations or their members.
2. Institutions providing information about the activities of suspects or members of criminal organizations, e.g., specific telephone calls made by them.
3. Institutions providing derogatory information, or intimate or embarrassing personal information about any person.

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Institutional Sources

4. Institutions providing assessments about the character or work of employees, if the information concerns a criminal suspect or is derogatory.

In other circumstances, involving less sensitive types of information, a theory of implied confidentiality will be more difficult to justify in the absence of some indication that the source treated the information as confidential. Examples of such information include the following:

1. Information concerning vehicle registration or ownership from motor vehicle departments.
2. Information about the fact that utility services were provided at particular locations and dates.
3. Routine information from state or local prison officials, such as release dates, etc.
4. Routine information provided by employers about starting and ending dates of employment, salaries, etc.
5. Contacts in which no information was provided or, on the other hand, where innocuous/unimportant information was provided.
6. Routine law enforcement record checks or credit checks.

In all of the above examples, it should be kept in mind that the identities of persons contacted at such organizations and supplying the information to the FBI should be protected under Exemption (b)(7)(C), unless such persons are known to be deceased. In the same respect, should the information itself pertain to a third party individual, the name(s) and any identifiers concerning the individual(s) should likewise be protected pursuant to Exemption (b)(7)(C).

In applying the standards of the Landano ruling, it should be kept in mind that this only affects the application of implied confidentiality. Wherein a confidential relationship does exist by virtue of an "expressed" or "specific" request of confidentiality, exemption (b)(7)(D) will be applied to protect the identity of the source, as well as, the information provided by the source. However, if the information would not tend to identify the source, it may be released as addressed in Attorney General Janet Reno's policy of discretionary disclosure of October 1993.

The following institutional sources have requested confidentiality as indicated:

- b7D 1.) [REDACTED] Information

[REDACTED] requires a subpoena duces tecum before substantive [REDACTED] file information

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Institutional Sources

b7D [redacted] is released if an investigation is not related to a violation against [redacted]. In addition, [redacted] policy requires that the customer whose records are being sought must be advised of the issuance of the subpoena unless the subpoena directs [redacted] to refrain from notifying the customer.

b7D Therefore, information from [redacted] should be considered as having been furnished under a promise of confidentiality if the document containing the [redacted] information does not mention whether [redacted] notified its customer. Assume it did not and protect the information under exemption (b)(7)(D) pursuant to an "express" grant of confidentiality. However, if [redacted] advises the customer that it has furnished information to the FBI, [redacted] should be considered to have waived its confidentiality rights and the information may be released in first party requests. Privacy issues may be warranted and the appropriate exemptions asserted when the information pertains to third party individuals.

b7D 2.) [redacted] Checks

b7D [redacted] liaison for Federal Customers has requested confidentiality in criminal and civil matters for future and past information. Exemption (b)(7)(D) should be asserted to protect [redacted] and the information provided.

F O I P A

M A N U A L

MEMO 57

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Interesting Case (I.C.) Memoranda Located In FBI Files
Date: March 31, 1998

Interesting Case (I.C.) Memoranda Located in Bureau Files

I.C.s were originally created by the public relations staff for the media and the public. These narratives consist of approximately 2-12 pages, span the years 1932-1972 and can be identified by the letters "I.C. file No. ..." located at the top left corner of the document. As all I.C.s have been publicly disclosed, they can be released in their entirety without redactions.

F O I P A

M A N U A L

MEMO 58

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Internal Revenue Service (IRS)
Date: March 31, 1998

Social Security Account Numbers

When referring documents or information to the IRS, it has been requested that, when known, the Social Security Account Number (SSAN) of the FOIPA requester also be furnished. Generally, the SSAN is provided on the initial FOIPA request letter of first party requesters, however, extensive file reviews should not be conducted to ascertain the number. The SSAN assists IRS in locating the original copies of the records referred by the FBI.

F O I P A
M A N U A L

MEMO 59

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Interview Notes; Special Agent
Date: March 31, 1998

Special Agents are required to retain the handwritten notes they make during or after any interview if they anticipate the results will become the subject of testimony. These notes are usually identified as the "1A" portion of an FBI field office file.

Exercise care in processing the handwritten interview notes. Compare the typed FD-302 interview notes, normally located in a main section of the investigative file, with the handwritten notes to ensure that all applicable exemptions have been asserted and that the same information has been protected in a consistent manner. Remain alert for additional information contained in the handwritten interview notes, such as the Agent's idea of areas to be explored while questioning the interviewee, leads sent out, or information provided by the interviewee which does not appear in the typed FD-302 and process this information accordingly.

F O I P A
M A N U A L

MEMO 60

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Investigations Conducted by the FBI
Date: March 31, 1998

Compromising the Investigation of an Organization Through Disclosure of a Member's File

The purpose of this memorandum is to emphasize the importance of considering the full range of FOIA exemptions when processing material from organizational files of a security nature. For example, the FBI investigates organizations such as various mafia groups around the country and in the past, the FBI investigated various communist groups fronting as legitimate organizations. Pursuant to Attorney General guidelines, the number of domestic security investigations conducted on organizations have been reduced.

It is imperative that we process material from organizational files in a manner which will adequately protect the Bureau's penetration and the scope of the coverage. A situation which merits particular attention is a request from a member of an organization, "front," or other group for his or her individual file. The individual's file may be closed, while the investigation of the organization may be continuing and quite sensitive. Documents concerning the investigation of the organization may have been channelized into the individual member's file. This "channelization" of documents from an organizational file to an individual member's file was created so that FBI investigators could have all current investigative information concerning an investigative subject. The indication that a document has been channelized is generally determined by an analysis of the copy count area on the document. The copy count will indicate the subject name and file number of all investigative files in which a copy of the organizational document was to be placed.

In processing these types of investigative files, it is important to consider the use of the (c)(1) exclusion or the (b)(7)(A) exemption if the investigation of the organization is pending. In processing closed investigations, all applicable FOIPA exemptions should be considered.

In order to ensure that organizational investigations are not compromised and that they are adequately protected, a PLS should call the last section of an organization's file to determine whether the organization continues to be of investigative interest to the FBI. Consideration should also be given to consulting with the substantive Division if any doubt exists as to the status of the case. These same procedures should be used in FCI organizational files. In certain instances it might also be appropriate to follow these procedures in closed organization files

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 9-27-98 BY SP/che

Investigations Conducted by the FBI

where a relationship might exist between the organization which was the subject of the closed case and another organization presently under investigation.

Investigations in Foreign Countries

The presence of an FBI Legat in a foreign country is at the pleasure of the host government. Any disclosure indicating that an investigation was conducted in a foreign country, by or on behalf of the FBI, may jeopardize the continued operation of our Legat in that country.

In processing FBI files, the PLS will ordinarily find documents reporting information from foreign agencies or authorities, however, the PLS may encounter documents which report FBI investigative activities in foreign countries. The latter type information is often classified and in such situations, Exemption (b)(1) should be cited to protect the information. Therefore, disclosure PLSs should be certain that information of this type is reviewed by the Document Classification Unit, keeping in mind this situation may also exist in non-security investigations. If the information does not warrant classification, the PLS should consult the Foreign Government Information Classification Guide (G-1)¹ to determine whether or not the foreign agency requests its information be protected and whether or not the foreign agency wants its relationship with the FBI made public. Some foreign agencies or authorities request that their information be protected; however, they do not object to their relationship with the FBI being made public. In those situations, the PLS would protect the foreign agency information pursuant to Exemption (b)(7)(D), but would release the identity of the foreign agency. Other foreign agencies request that both the information and their identity remain protected, and thus, all information would be redacted pursuant to (b)(7)(D).

Documents which often report foreign agency or authority information usually originate from an FBI Legat. It is important to note that even the "From" line in a Legat-authored communication can be sensitive information because it specifically identifies the host country and when combined with the details of the communication, reveals the fact that the host country has furnished information to the FBI. Situations do arise wherein the "From" line of a Legat communication is properly classified "Secret," which is possible even in criminal cases. If the document has been classified "Secret" in its entirety that classification covers the "From" line. If the document is not classified in its entirety the "From" line is not classified unless there is a classification marking opposite that line. In all cases where the document is not classified in its entirety and there is no classification marking by the "From" line, the same procedures should be followed as above in utilizing the G-1 guide. If there are any questions concerning the

¹The G-1 Guide provides instructions on the classification of national security information pertaining to foreign government information.

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Investigations Conducted by the FBI

classification of the "From" line, the PLS should contact the DCU PLS who reviewed the document for classification even if the case is of a criminal nature.

If the PLS has any questions concerning the application of exemptions to Legat/foreign government information and/or the Legat's activities in a foreign country, the matter should be discussed with the Team Captain and/or Unit Chief. If a disclosure is still contemplated after that point, the matter should be discussed with personnel from the International Relations Unit.

Multiple Subject Investigations

If the Team Captain and/or PLS determines that the requester is carried in a multiple subject investigation, it may be appropriate to check the other names with RTSS to determine if the file has been previously processed for another requester. It is recognized that privacy interests will dictate how much information will be provided other requesters; however, the possible use of Exemptions (b)(6) and/or (b)(7)(C) may depend on whether the information was withheld or disclosed in a prior release.

Since these multiple subject cases vary in their makeup, a hard and fast rule that other subjects' names should be checked for prior processing in every instance is not necessary. However, the advantages of uniformity in processing and the time saving factors should be carefully considered, resolving any doubts in favor of checking the indices.

F O I P A
M A N U A L

MEMO 61

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Iran-Contra / Front Door Material
Date: March 31, 1998

Iran-Contra Investigation; Front Door Files

FRONT DOOR is the code word for the investigation conducted by the Office of Independent Counsel (OIC) relating to the Iran-Contra. Information pertaining to the Iran-Contra is filed in FBIHQ files 58-11887 and HQ 211-26.

If either of the above file numbers appear on a search slip, **DO NOT call the files and DO NOT PROCESS the files.** The Special File Room (SFR) controlled access to HQ 58-11887, but the SFR has released HQ 211-26 for review. If you should receive either of the above files, contact PLS [REDACTED] immediately. *bl*

The Office of the Independent Counsel on Iran-Contra has been disbanded and all of their material has been transferred to National Archives pursuant to Title 28, U.S.C., Section 594(k). Material indexed into 58-11887 or 211-26 will no longer be reviewed or processed by FBI PLSs and, where appropriate, the following paragraphs should be used for response to requesters:

A.) First Party Request Which Results in Cross-references

"A search of the indices to our Central Records System files at FBI Headquarters revealed material that may or may not be identical to you in files concerning the sale of arms to Iran and the possible diversion of proceeds from those sales to Nicaraguan "Contras." This material is located at the Office of National Archives. If you have further interest in "Iran-Contra" related material, you may wish to correspond directly with the Office of National Archives."

B.) Request for the Entire Investigation

"Reference is made to your request for material relating to the "Iran-Contra" investigation which concerns the sale of arms to Iran and the possible diversion of proceeds from those sales to Nicaraguan "Contras." This material is located at the Office of National Archives. If you have further interest in "Iran-Contra" related material, you may wish to correspond directly with the National Archives."

F O I P A

M A N U A L

MEMO 62

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Laboratory Notes
Date: March 31, 1998

FBI Laboratory Notes

The Scientific Analysis Section, Laboratory Division, has advised that it has no objection to the release of Laboratory notes and reports in Bureau cases. However, if such notes from this Section, or any other Section within the Laboratory Division for that matter, contain unique Laboratory exams or possibly unknown techniques, a Laboratory examiner should be consulted, preferably the examiner who made the notes, before such releases are made. If the original examiner is not available, the particular Unit Chief should be contacted for any questions or to review the proposed release of laboratory material.

In cases where the Laboratory examination was done at the request of a local or state police agency involving a matter over which they have exclusive jurisdiction, the Landano standard of processing must be applied if a specific request for confidentiality for the material was not indicated. On rare occasions, it may be necessary to contact the law enforcement agency for assistance or for further information to complete the analysis and processing of the case.

F O I P A
M A N U A L

MEMO 63

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Legal Attache
Date: March 31, 1998

Search Procedures for Legal Attache (Legat) Files

b6
When a request is made for a search to be conducted of the Legat files, the LT or PLS should complete and submit a search slip to the Special File Room, Room [REDACTED] to the attention of [REDACTED] b2
Indicate on the search slip that the scope of the search is for the "Automated" Data Base only, unless the FOIPA request letter specifically asks for the "Manual" indices to be searched or if the information being requested would in itself only be found in the manual index. Also, indicate that the type of search requested is "Legat Indices," specifying which Legat is to be searched (See sample attached). If an initial FOIPA request is received in RMU for a specific Legat, the search should be completed and the copies of the file(s) obtained prior to assignment of the request to a Disclosure Unit.

Storage of and Obtaining Legat Files

On May 23, 1984, the Legat Micrographics Program was initiated to enhance security because of the potential hazardous environment of an overseas post and to relieve overcrowded file storage conditions in the Legats.

When an investigation has been closed in the Legat for 90 days, the raw file is sent to FBIHQ to be stored or placed on microfiche. A copy of the microfiche is furnished to the Legat and a copy is maintained at FBIHQ in the Micrographics Unit, Room [REDACTED], extension [REDACTED]. The 1A and Bulky Exhibits are not microfiched, only the covers to this material. If copies of the 1A or Bulky enclosures are needed, they can be retrieved from either Pickett Street or Boyers, Pennsylvania. If a copy of the file will suffice, the Microfiche can be duplicated and sent to the LT or PLS. If the raw material is needed, it will be retrieved by the Micrographics Unit and forwarded to the LT or PLS.

Legat ELSUR Requests

If a request has been made for a search of a specific Legat's ELSUR indices, the requester should be advised there are no ELSUR indices in the Legats. The FBI has no authority to conduct ELSUR in foreign countries, therefore an ELSUR indices is not maintained.

F O I P A

MEMO 64

M A N U A L

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Mail Covers
Date: March 31, 1998

Mail covers are placed with the Postal Service and entail the Postal Service watching for and recording the addressee and addresser of all mail written to a particular individual or organization. The existence of a mail cover is not generally protected under Exemption (b)(7)(E); however, National Security mail covers are often classified and governed by Exemption (b)(1) law.

At times, unique circumstances may exist where information pertaining to a mail cover may need to be protected, such as when the mechanics/details of the mail cover (which are not generally known to the public) are set forth in an FBI record. Should it surface, the PLS may be able to protect those aspects of the mail cover under Exemption (b)(7)(E). In other instances in which mail covers were utilized, the assertion of Exemption (b)(7)(E) should be considered for cases recently closed by administrative means and did not reach a prosecutive status. If the case has the possibility of being reopened or a "spin-off" case was involved, the release of the fact a mail cover was utilized could be a detriment to the reopening of the investigation or any related pending investigations. Contact with the field office Case Agent is recommended in these situations in order to determine if there is a "foreseeable harm" in disclosure of the information.

F O I P A
M A N U A L

MEMO 65

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: **Manuals, FBI**
Date: March 31, 1998

The following FBI manuals have been processed and are available for release:

- Manual of Administrative Operations and Procedures (MAOP)
- Manual of Investigative Operations and Guidelines (MIOG)
- Foreign Counterintelligence Manual (FCIM)
- National Crime Information Center (NCIC) Manual
- Legal Handbook for Special Agents

b6 Inasmuch as these manuals are available for review in the FOIPA Reading Room and they undergo periodic changes, information being considered for release should be coordinated with Team Captain [REDACTED] or PLS [REDACTED] Unit 3, prior to any disclosure.

F O I P A

MEMO 66

M A N U A L

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: National Center for the Analysis of Violent Crime (NCAVC)
Date: March 31, 1998

"252" Files and Other Bureau Classifications

The National Center for the Analysis of Violent Crime (NCAVC) is managed under the auspices of the Critical Incident Response Group (CIRG), a field office entity located at the FBI Academy in Quantico, Virginia. Previously, the NCAVC has encompassed several programs and units to include:

1. The Violent Criminal Apprehension Program (VICAP) and the Criminal Investigative Analysis Program (CIAP), both of which have been administered by the Profiling and Behavioral Assessment Unit (PBAU).
2. The Missing and Exploited Children Task Force (MECTF) which has been administered by the Child Abduction and Serial Killer Unit (CASKU).

The CIRG consolidated PBAU and CASKU resources under the single descriptor, the National Center for the Analysis of Violent Crime. VICAP has become its own unit, but also functions under the NCAVC umbrella.

All NCAVC components are designed to provide assistance to federal, state and local law enforcement agencies in the detection and apprehension of violent criminal offenders, including those persons commonly referred to as "serial murderers."

The material compiled at the request of federal (non-FBI), state and local law enforcement agencies is maintained in the 252 classification. The NCAVC also provides assistance to FBI field divisions during the course of FBI criminal investigations such as kidnapping, extortion, crime on government reservation, etc. In these instances the NCAVC material will be found in the FBI investigative file classification.

The subject's name, if known, as well as that of the victim(s), is indexed in the general indices at FBIHQ. These records will appear in the indices and/or on the search slip as Universal Case files (i.e., 252-IR-12345) or the pre-Universal Case file numbering system (i.e., 252-2345).

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National Center for the Analysis of Violent Crime

Since April 1992, all opened and closed HQ 252 classifications have been manually maintained at Quantico as a part of the NCAVC record system (JUSTICE/FBI 015). The HQ 252 files generated prior to 1992 are maintained at Picket Street or Quantico. You should also be aware that NCAVC/VICAP manually maintains their equivalent 252 file classification and other file classifications concerning violent crimes investigated by the FBI (such as kidnapping, extortion or crime on government reservation) at Quantico.

The NCAVC is maintaining a control file, 190-IR-C-2246, for FOIPA requests involving 252 files and the other classifications, as described above. If an FOIPA search reveals that a 252 file or other classifications exists, the LT or PLS should:

- b2 1. Contact the Rotor Clerk for the NCAVC at [REDACTED] or 540-720-[REDACTED] or [REDACTED] in order to obtain the file(s) for duplication and processing.
- b2 2. EC or FAX a copy of the FOIPA request letter to the attention of the NCAVC/VICAP Unit Chief at (540)-720-[REDACTED] and the CIRG, Chief Division Counsel at (703)-640-[REDACTED]
3. Provide NCAVC with the requester's 190 file number and the FOIPA computer number.

Data concerning violent crimes is also stored in an automated data base maintained by the NCAVC in a separate FBI record system which is part of the NCAVC (JUSTICE/FBI-015). This data base contains information which is used in the overall VICAP Program. NCAVC/VICAP analyses the information in this data base to identify any common threads which might run through the various cases.

Components of the NCAVC/VICAP data base should not be searched unless the requester specifically asks that it be searched or includes information in his request letter which indicates it should be searched.

The information in the NCAVC/VICAP data base and the 252 VICAP files is exempt from access under the Privacy Act pursuant to exemption (j)(2). When processed under the Freedom of Information Act, the appropriate Exemption 7 provisions should be utilized in addition to any other applicable FOIA exemptions. In addition, contact and coordination should be made with NCAVC/VICAP when processing these cases.

Because of the sensitive nature of the techniques used by all NCAVC components in their development of unknown offender profiles, investigative recommendations, interviews and interrogation techniques, prosecutive and trial strategies, threat assessments, overall crime analysis, search warrant affidavits and expert testimony, the NCAVC should be consulted. Upon completion of the processing of the 252 file or other classification, the PLS should:

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National Center for the Analysis of Violent Crime

1. Provide NCAVC with a black-out copy of the proposed release for their review prior to disclosing any material to the requester.
2. Provide NCAVC with a copy of the final disclosure or denial letter. If the case is being closed administratively, notify NCAVC of this action and the reason for closing the case.

If the FBI receives an administrative appeal concerning the material from a 252 file and the DOJ/OIP attorney affirms the appeal, there is no need to advise NCAVC. If, however, the DOJ attorney suggests an amended release, consult with the NCAVC before agreeing to the release of additional material. Then provide NCAVC with copies of:

1. The requester's appeal letter.
2. The DOJ acknowledgment letter.
3. The DOJ letter advising requester of a remand or an amended release.
4. The FBI letter releasing the additional material.

If the FBI receives an appeal concerning one of the other file classifications, as described above, containing NCAVC material and the DOJ attorney affirms the appeal or the DOJ attorney recommends release of material that does not include the NCAVC material, there is no need to advise NCAVC of the appeal. However, if the DOJ attorney recommends the release of information of interest to NCAVC, consult with NCAVC before agreeing to the release of the additional material. Provide NCAVC with copies of items 1 through 4 above.

Be aware that much of the work done by NCAVC is for other federal (non-FBI), local and state law enforcement agencies, and there will be times when the FBI file is closed and the other federal, state or local investigation is still pending. The (b)(7)(A) exemption of the FOIA should be considered.

When processing a VICAP report, the PLS will release the cover page. For the report itself, the PLS will need to review the report to determine the origin of the information in the report. If the material in the report was furnished by a state or local law enforcement agency, the PLS will deny the report in its entirety citing Exemption (b)(7)(D) and if applicable Exemption (b)(7)(C). If the material in the report was furnished by a federal (non-FBI) law enforcement agency, the PLS will consult with the contributing agency.

F O I P A
M A N U A L

MEMO 67

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: National Crime Information Center (NCIC)
Date: March 31, 1998

NCIC Entries For Missing Children

The Missing Children Act, which was signed on 10/12/82, gives a parent, legal guardian, or next of kin of a missing child the legal right to inquire of the FBI whether data on the missing child has been entered in the NCIC Missing Person File. Such inquiries should not be processed under the Freedom of Information Act (FOIA) or Privacy Act (PA), but should be referred to the FBI field office which covers the locality involved.

Requests to verify the missing child entry which are made by anyone other than a parent, legal guardian, or next of kin must be considered FOIA requests. In most cases, such requests should be denied under Exemption (b)(7)(C).

NCIC Message Keys and Originating Agency Identifiers (ORIs)

Identification records (rap sheets), NCIC and III printouts may contain NCIC Message Keys and/or Originating Agency Identifier (ORI) numbers. These message keys and ORI numbers do not warrant protection pursuant to a FOIPA exemption.

A Message Key is a two-or three-character designator which identifies the type of entry or query sent. Although there are over 75 keys in present use, they will typically begin with the alpha characters "C" (Clear or Cancel), "E" (Enter), "M" (Modify), "O" (query), "X" (Clear), or "Z11" (Test). All letters in a Message Key are capital letters, and they generally appear at the beginning of a message. They often follow the entry code "MKE/", although they also appear in other places, such as in a header line, separated from the ORI by a period. (Note: the MKE/ code may also be followed by a narrative description of a message key for responses from system records.

An ORI is a nine-character entry which identifies the agency entering the message, or another agency related to a previous NCIC message or event. ORIs begin with a two-letter state code, but may end in either a numeric or alphabetic character. They may or may not follow the entry code "ORI". They commonly appear in three places:

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National Crime Information Center (NCIC)

- 1) the beginning of a record, representing the agency requesting a record;
- 2) in the body of a record, representing the agency which entered the record; and
- 3) in an III record, following identification of an arrest event, representing the arresting agency.

Due to variances in state and federal system formats, the positions of message keys and ORIs may vary from record to record. In addition, anticipated changes in the NCIC system may create similar codes. (An example is the proposed "CTI" identifier for courts issuing warrants.) The examples provided below are typical of how the codes may appear as discussed above:

1.) 2L0102077MJM .QH.DCFBIWA36.NAM [REDACTED]

2.) 7L0102077MJM
DCFBIWA36

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM [REDACTED] SEX/M RAC/W DOB [REDACTED]

NAME [REDACTED]

FBI NO. [REDACTED]

INQUIRY DATE
10/25/90

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE
M	W	[REDACTED]	5'11"	185	BRO	BRO	[REDACTED]

FINGERPRINT CLASS
PO PI CO PO PM
PI PM 10 PI 13

ALIAS NAMES
[REDACTED]

IDENTIFICATION DATA UPDATED 10/16/90

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

FBI

-FBI [REDACTED]

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX
BY USING THE APPROPRIATE NCIC TRANSACTION.
END

3) QW.DCFBIWA36.NAM/BADGUY,JOHN T.DOB/010101

b6
b7c

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National Crime Information Center (NCIC)

DCFBIWA36

NO NCIC WANT DOB/010101 NAM/BADGUY,JOHN T

Stop Index in NCIC

The Bureau Stop Index Program was instituted in April, 1971. Essentially, it was a computerized file included in NCIC for intelligence purposes on individuals against whom warrants were not outstanding. NCIC queries by any NCIC user would result in a "No NCIC Want" response to that user, but would generate a special notice to the NCIC Control Room to notify the appropriate Field Office of the inquiry. The Program was discontinued in February, 1974.

NCIC has determined there can be no entry into NCIC except for categories of individuals or records published in the Federal Register pursuant to the Privacy Act. Consequently, language in FBI documents, especially form FD-305, such as "Stop Notice Placed with NCIC" or "Stop Notice Placed with the Bureau Stop Index" is not protectable under (b)(7)(E).

Please take the foregoing into consideration when processing documents pertaining to NCIC Stop Notices.

F O I P A
M A N U A L

MEMO 68

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: National Security Agency (NSA)
Date: March 31, 1998

NSA Referral Policy

b3
per
NSA

When any NSA originated document or information is located in an FBI file being reviewed for release under the FOIPA, no information will be released to the requester from that file or document until a referral is made to NSA and a response is received. [REDACTED]

NSA will make reasonable efforts to respond to the referral within ten days (allow an additional ten days for mailing). Depending on the particular circumstances, NSA will advise [REDACTED]

[REDACTED] Time extensions can be arranged with NSA in those rare cases that involve voluminous referrals.

b3
per
NSA

[REDACTED]

Since special clearances are normally required to handle NSA documents, the following individuals who have the proper clearances will handle all NSA referrals:

Unit 1 - [REDACTED]
Unit 3 - [REDACTED]

b6

If you locate an NSA document or NSA information in an FBI document while reviewing a file, refer the matter to the PLS listed above who is designated to handle NSA matters in your Unit. The designated PLS will review the document and instruct the PLS on how to handle the referral or, if the document contains information that is Sensitive Compartmented Information (SCI), he or she will handle the document. The NSA has requested that the FBI refer only one copy of the referred document(s). The designated PLS's name will be on all referrals as the

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Page 2

National Security Agency (NSA)

b2 person for NSA to contact. After the referral is initialed for approval, the designated PLS will hand carry the referral to the Special File Room and an FD-501a form will be attached to the referral. The designated PLS will then hand carry the referral to the FBI's NSA Liaison Agent in Room [REDACTED]

When the referral has been returned by NSA, the designated PLS will hand carry the referral from the Special File Room and will handle the processing of the NSA information if it is SCI. If, however, the information is Top Secret (TS) or lower and not SCI, the PLS to whom the case is assigned will handle the returned referral since all FBI employees have access to TS information. The returned referral in all instances must be presented to Document Classification Unit. (See FOIPA Section numbered memorandum "Classified Material, Handling and Transmittal of" which provides instruction on handling TS/SCI information.)

F O I P A
M A N U A L

MEMO 69

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Personnel Files
Date: March 31, 1998

Personnel Files of Current and Former FBIHQ Employees

A) CURRENT EMPLOYEES

Experience has shown that few deletions are made from personnel records and few employees ever request a copy of their complete file. For this reason, it is more expedient to permit the employee to review the raw file and to copy, process, and retain only those documents wherein information is being withheld. The procedures outlined below should, therefore, be followed by the PLS:

(1) Obtain the Official Personnel File (OPF). Personnel files are requested through the Automated Case Support (ACS) system. Many of the personnel files have now been separated into a main 67, a Medical Section (Sub M) and a Security Section (Sub S). If a Sub M or Sub S file exists, it will be stamped with a notation on the outside jacket of the main 67 file. If a personnel file is needed by the PLS for more than a day, it must be secured overnight in a locked cabinet.

(2) Review the entire file and identify those documents containing information to be withheld.

(3) Duplicate only those documents which contain material that requires protection from disclosure and use the duplicate as a work copy to delete the material. A final disclosure copy (black-out copy) should then be made and temporarily inserted into the file in place of the original document. (If a large amount of duplication is to be done, complete the duplication form, place the file in a messenger envelope and forward it to the Duplication Center.)

(4) Since an employee will normally be afforded the opportunity to review classified information contained in their personnel file, it is not necessary to have the file reviewed by DCU prior to review by the employee. If the employee wants a copy of a document containing classified or potentially classifiable information, only those documents that the employee wants copies of will be reviewed by DCU. The file should be submitted to DCU with the documents which warrant classification review noted on OPCA-18 form. The following are examples of information which may be found in personnel files and require DCU review: Special Agent,

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Personnel Files

Radio Maintenance Technician, and Special Employee files which may contain references or notations in the annual performance rating to security informants or the specific nature of FCI investigations handled by the employee; a synopsis of an FCI investigative matter handled by an employee as justification for a letter of commendation; in-service memos detailing the nature of FCI training; or material in the background investigation of the employee which may have been obtained from foreign police agencies.

(5) Prepare an addendum to the FD-488 (Privacy Act Request Form) setting forth the following: the reason for any excisions; number of pages withheld in their entirety, if any; and a description of the last document/serial in the file as of the time of processing. Since a formal disclosure letter is normally not prepared in connection with these reviews/releases, it is recommended that the employee initial the addendum as evidence of his or her understanding of the deletions made.

(6) The proposed disclosure must be reviewed by a Team Captain.

(7) Contact the employee and make an appointment to review the file. If possible, provide an appropriate location where the review can be conducted other than the PLS's work area. If the employee is not located at FBIHQ and is not in a position to review the material in the FOIPA Section, contact the Field Coordination Team to determine the appropriate procedure for the employee to review the file.

(8) Have the employee sign the lower portion of the FD-488 acknowledging the employee was given appeal rights and the right to obtain copies of reviewed material.

(9) Have copies made of any documents requested. A notation may be added to the addendum identifying documents requested by the employee.

Requests by FOIPA Section employees for access to their own personnel files will be assigned for processing by the Section's Front Office.

In addition to the OPF, personnel/performance folders are maintained by the rating official on FBI employees. At the time the employee is provided with his or her performance rating, a request may be made by the employee for access to physically review this folder. Should the employee request copies of any material maintained in this folder, he or she should be advised that a FOIPA request must be submitted in order to obtain copies of the material.

There may be particular circumstances which preclude the release of certain performance related information or documentation to the employee. These circumstances may include information or documentation which is relevant to a pending complaint, charge or internal investigation.

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Personnel Files

B) FORMER EMPLOYEES

Former employees are generally treated as members of the public. They may not review their files in the FOIPA Section space or have access to classified information. When their files contain information which may require classification, the entire file should be sent to DCU for review.

FOIPA personnel should remain alert for information located in personnel records which may require classification. This includes, but is not limited to, such items as: references to the SSG (Special Support Group); language training for certain vice training classes; various Bureau codes and systems data; some security clearance forms; and information concerning the duties or responsibilities of Radio Maintenance Technicians.

C) MEDICAL RECORDS

Employee medical records may be located in the following places: 1) the employee's personnel file; 2) the employee's medical folder, which is part of the personnel file but is maintained separately from it; and 3) the employee's clinical file, which is located in the Health Services Unit.

Medical folders were first established for agents in 1986 and for support personnel in 1988. Prior to the establishment of those folders, all medical records were filed in the employee's personnel file. Since the records in a personnel file were not removed and placed in a newly opened medical folder, an employee's medical record can be located in all three places mentioned above. Existence of a medical folder will be indicated by the stamp "Medical Records Filed Separately" on the personnel file. Medical folders are requested by calling the Personnel Records Unit (Ext. 4857).

Clinical files, which were first established on 1/13/86, contain the original EOD physical examination report of a current employee hired after that date and various other records. After employment ends, the documents in the clinical file are placed in the medical folder. Clinical files should be requested by calling the Supervisory Occupational Health Nurse (SOHN). If records are obtained from the clinical file for processing, an FOIPA Section employee must annotate the FD-488 Privacy Act Request to show which records were retrieved and included in the processed package.

If a release of medical records pursuant to a Privacy Act request might cause harm to the requester or another person, then those records should first be discussed with the SOHN. This can occur, for instance, when records are found concerning a psychiatric/emotional condition, or any other sensitive medical problem. If the decision is made that potential harm could occur if released directly to the requester, then the requester should be advised the material will be released pursuant to Title 5, U.S.C. §552a (f) (3). That is, the requester must provide the FOIPA

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Personnel Files

Section with the name and address of his or her personal physician and the records will be forwarded to the physician for release to the requester. The release of this type of information is done through the physician so the medical information can be clearly discussed and explained to the requester.

D) SENDING PROCESSED MATERIAL TO FILE

When a Privacy Act request involves processing of material from a 62 {Administrative Inquiry (AI)}, 67, 263 or 280 file classification, the pages containing deletions should be forwarded to the Personnel Records Section for filing into the respective 62 (AI), 67, 263 or 280 file along with the original FD-488 and/or OPCA-16 form (Disclosure letter). Please note those documents from the 67 Sub M and/or the Sub S which contain redactions are to be filed in the 67 Sub M and/or Sub S, along with a copy of the FD-488 or the OPCA-16 form, and not in the main 67 file. If processing also involves additional file classifications, then a 190 file should be opened and the processed documents from the other file classifications should be filed in the 190 file along with a copy of the FD-488 and/or OPCA-16 form. The 190 file number should be recorded in the "Miscellaneous" block on the computer sheet.

**Personnel Type Records Maintained at the FBI Academy,
Quantico, Virginia**

Presently, there are two administrative units at the FBI Academy which maintain separate folders containing records identifiable with Special Agent (SA) personnel. The New Agents Unit maintains folders containing information compiled during New Agent's training. The Personnel Assessment Unit maintains similar folders containing information on those SA Personnel who attend the Management Aptitude Program (MAP) training sessions at the Academy.

In order to bring these records within the FBI Central Records System, a memorandum is inserted in each employee's personnel file at Headquarters at the time they go through either the New Agents or the MAP training program. This procedure was implemented in approximately November 1981.

As a result of discussion with the MAP Assessment Unit, FBI Academy, it was determined that much of the material maintained in the MAP folder is exempt from access pursuant to Exemption (k)(6) of the Privacy Act (PA) and (b)(2) of the Freedom of Information Act (FOIA), as disclosure would compromise the evaluation process.

In order to facilitate the processing of MAP materials, and to eliminate the need for the unnecessary transfer of documents from the FBI Academy to the FOIPA Section, all requests for

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Personnel Files

MAP documents will be reviewed personally by the Unit Chief of the Personnel Assessment Unit. The Unit Chief will remove all MAP documents previously determined to be exempt from disclosure pursuant to Exemptions (k)(6) and (b)(2). Any remaining documents will be forwarded by routing slip to the FOIPA Section for processing, setting forth the number of pages withheld pursuant to Exemption (k)(6)/(b)(2).

In the event the request for MAP documents reaches the litigation stage, the Unit Chief of the Personnel Assessment Unit will provide justification for withholding exempt material.

Documents forwarded to the FOIPA Section for processing will include, but are not limited to, the cover page of the MAP report, biographical statements filled out by the MAP candidate, the assessor rating sheets, and the post MAP documents.

The MAP report, which the MAP candidate reviews and initials upon completion of the assessment or shortly thereafter, is exempt pursuant to Exemptions (k)(6)/(b)(2). If the FOIPA requester desires a second review of this MAP report, they should be advised to contact the Unit Chief of the Personnel Assessment Unit at Quantico.

CIA Name Checks in Suitability/Applicant Type Files

Forms used for CIA name checks in suitability applicant files do not have to be referred to CIA if the form indicates "No Record", "No information," or "No Trace." For further information concerning the handling of these forms if any other type of response was noted, see the FOIPA Numbered Memo 8 pertaining to CIA.

Credit Bureau Reports Contained in Personnel Files

PLSs will often encounter credit bureau reports in personnel files. These reports are often denoted as "confidential"; however, this designation does not mean the report is classified and per discussion with personnel of Credit Bureau Reports, Incorporated, it does not denote the manner in which the reports were furnished to the FBI. Therefore, it is the policy of the FBI's FOIPA Section to release these credit bureau reports to first party requesters as well as third party requesters with proper notarized authorization to receive such information.

Psychological Services Provided to the FBI

Doctors [REDACTED] and [REDACTED] b6

b6 Doctors [REDACTED] and [REDACTED], who are no longer under contract with the FBI, previously provided psychological services to Bureau employees as part of the Bureau's psychological services program. As of March 1998, Dr. [REDACTED] on behalf of himself and his wife, Dr. [REDACTED] (Social Worker), requested they be given the opportunity to retain confidentiality on a case-by-case basis. Therefore, Dr. [REDACTED] requested that he or his wife continue to be notified if information provided by them is in a file being processed pursuant to the FOIPA. Dr. [REDACTED] may be contacted at the [REDACTED] [REDACTED] at telephone number [REDACTED] or [REDACTED]. Since the current work environment of Dr. [REDACTED] is not conducive to receiving telephone calls, [REDACTED] advised the message could be left with him or a message could be left at their home telephone number [REDACTED] [REDACTED] and [REDACTED] would return the call. This notification should be done at the Team Captain level or higher.

Thus, if information provided by the Doctors is located in any document being processed by FOIPA Section employees, the doctors should be notified. Unless advised to the contrary by them, the information should be protected by FOIPA exemptions (k)(5)/(b)(7)(D) in order to protect the confidentiality of both doctors. If the information cannot be protected for some reason such as prior public disclosures, the Doctors should be contacted and notified of that fact.

Metropolitan Psychiatric Group

b6 Dr. [REDACTED] Metropolitan Psychiatric Group (MPG), telephone 202-452-9080, is currently providing psychological services to FBI employees. Information provided by Dr. [REDACTED] and/or any member of the MPG should be afforded protection for confidentiality purposes pursuant to FOIPA exemptions (k)(5)/(b)(7)(D). Also, should there be situations where a document being processed contains information provided by the MPG about a third party employee, not the requesting employee, the third party information should be protected in its entirety for privacy rights of the third party and the confidentiality of MPG pursuant to FOIPA exemptions (k)(5), (b)(7)(D), (b)(6), etc.

Any questions concerning the FBI's psychological services program or specific questions concerning particular cases should be directed to the Unit Chief of the Employment Assistance Program at extension 5244.

Access to Career Board Minutes

b6 In July 1989, a 67 control file was established to maintain all information pertaining to Career Board Minutes. This file contains agenda which outlines all of the positions considered on a listing, and each agenda item is addressed separately, setting forth the position considered, the person selected and why, and all persons whose qualifications were considered. Due to the sensitivity and personal nature of the material, access to the Career Board Minutes is limited to PLS [REDACTED], Unit 1.

b6 When a request is made for Career Board Minutes pursuant to a FOIPA request, it will be assigned to PLS [REDACTED] for processing of any or all Career Board tape recordings, accompanying minutes and/or agenda. Documents that are physically contained in a personnel file which pertain to Career Board activities or information will, in most instances, be processed by the PLS to whom the case is assigned. However, the PLS should contact PLS [REDACTED] in order to verify that he does not need to process the documents.

Informal Access Review of Personnel Files

(The request for an Informal Access review is not processed through or by the FOIPA Section or its employees. Employees have been designated from each field office and FBIHQ Division to handle these requests. This is a request only to review the personnel file and no copies of any documents are made available to the employee through the Informal Access procedures.)

In the Settlement Agreement reached in Emanuel Johnson, et. al. V. Stuart M. Gerson, Acting Attorney General, the FBI agreed to establish procedures whereby all FBI employees could access their personnel files without submitting a Privacy Act request.

With the exception of Legats, all offices including FBIHQ Divisions and offices, will be responsible for handling requests for informal access to personnel files from employees assigned to their offices. (Legats will forward requests from employees assigned to their offices to FBIHQ for handling.) Field offices will also be responsible for handling requests from employees assigned to Resident Agencies within that office's territory.

FBIHQ employees may make an informal access request by executing a request form and submitting their request to the Assistant Director (AD) or office head of their assigned division. Field office employees may execute a request form and submit their request to the Special Agent in Charge (SAC) or the Assistant Director in Charge (ADIC). The request will then be forwarded to the designated employee handling these requests for processing.

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Personnel Files

Fifteen and 45 day periods have been established as a time frame in which the employee's file will be available for review. This 15 and 45 day period will begin upon receipt of the employee's request by the SAC, ADIC, AD or office head.

Upon review of the file, an employee will be afforded an opportunity to submit to the respective SAC, ADIC, AD or office head a response or rebuttal to any information in their personnel file for inclusion in that file.

F O I P A
M A N U A L

MEMO 70

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Photograph Albums, FBI
Date: March 31, 1998

Processing under the Freedom of Information Act

A partial list of FBI Photograph Albums is published in the FBI's Privacy Act Records Systems Notices (52 Fed. Reg. 47, 237, October 5, 1993), which is included in the FOIPA Manual. Some of the Photo Albums identified in this systems notices are:

Bank Robbery Album
Known Check Passers Album
Organized Crime Photo Album
Prostitute Photo Album
Thieves, Couriers and Fences Photo Index
Top Burglar Album
Truck Hijack Photo Album
Truck Thief Suspect Photo Album
Traveling Criminal Photo Album

Not all of the FBI's Photograph Albums are published since some of them are classified. Since it would be impractical to research and treat each of the FBI's Photograph Albums in detail, this memo will only give some general guidelines concerning processing of information from a Photograph Album.

If the Photograph Album consists of subjects suspected of criminal activity, the album is probably published in the Federal Register and will generally not require classification review. DCU should be consulted, however, if there is a potential foreign relations impact in the event information is released. For example, if the document being processed indicates the FBI received an LCN member's photo from Italian authorities, the document should be referred to DCU for classification review. Release of such information could have a negative impact upon the United States' National Security as well as the future relationship between the FBI and the Italian authorities. Documents concerning domestic and international terrorism should always be forwarded to DCU for classification review.

In addition to Exemption (b)(1), Exemptions (b)(7)(A), (b)(7)(C), (b)(7)(D) and

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Photograph Albums, FBI

(b)(7)(E), and Exclusions (c)(1) and (c)(3), should also be considered. The use of Exemption (b)(7)(E) should be considered to protect the criteria used to determine when a subject is of sufficient interest to be shown in a Photograph Album.

Processing under the Privacy Act

Information from Photograph Albums will generally be protected from disclosure under Exemptions (j)(2) or (k)(1).

F O I P A
M A N U A L

MEMO 71

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Polygraph Examinations
Date: March 31, 1998

[REDACTED] which make the use of the polygraph an effective investigative technique. Countermeasures could be employed by an individual to defeat the procedure if the exact sequence of questions was known, along with the purpose for some of the questions and the importance placed on them by the FBI. Therefore, Exemptions (b)(2) and/or (b)(7)(E) are appropriate to withhold the following types of information concerning polygraph examinations in FBI criminal/security files:

b2
b7E

1) Numerical ratings on Polygraph Charts:

Polygraph charts may be released to first party requesters with the exception of any numerical ratings. The numerical ratings usually appear at the bottom portion of the chart along with a minus (-) or plus (+) symbol. These ratings should be exempt pursuant to (b)(7)(E). In recent cases, computerized polygraph charts are being generated and the information as bracketed on **Attachment 1** should be protected pursuant to Exemption (b)(7)(E).

2) Polygraph Examination Worksheet (FD-497)

Exemptions (b)(2) and (b)(7)(E) should be utilized to protect the information in the boxes reporting the "Type Test, Series, Charts, and Instrument Serial No." Also, a complete list of questions asked during the polygraph examination will normally be found on the reverse side of the FD-497 or sometimes on a separate sheet of paper as original notes. If a complete list of the questions exists, redact the list entirely pursuant to Exemptions (b)(2)/(b)(7)(E). (See Attachment 2)

3) Polygraph Examination Report (FD-498)

The Polygraph Examination Report is releasable in first party requests, including references to the relevant questions and the examinee's answers in the "conclusion" portion of the report, unless it contains additional material exempt under some other provision of the FOIA or PA. For example, some polygraph examinations will include FCI material and will have been classified at the time of origination. In many cases, these polygraphs remain classified upon completion of Document Classification Unit's review and are withheld from disclosure in their entirety pursuant to Exemption (b)(1). (See Attachment 3)

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Page 2

Polygraph Examinations

- 4) **Polygraph Zone Comparison Numerical Analysis Data Sheet (FD-524)**
Polygraph Review Modified General Question Test Numerical Evaluation (FD-525)

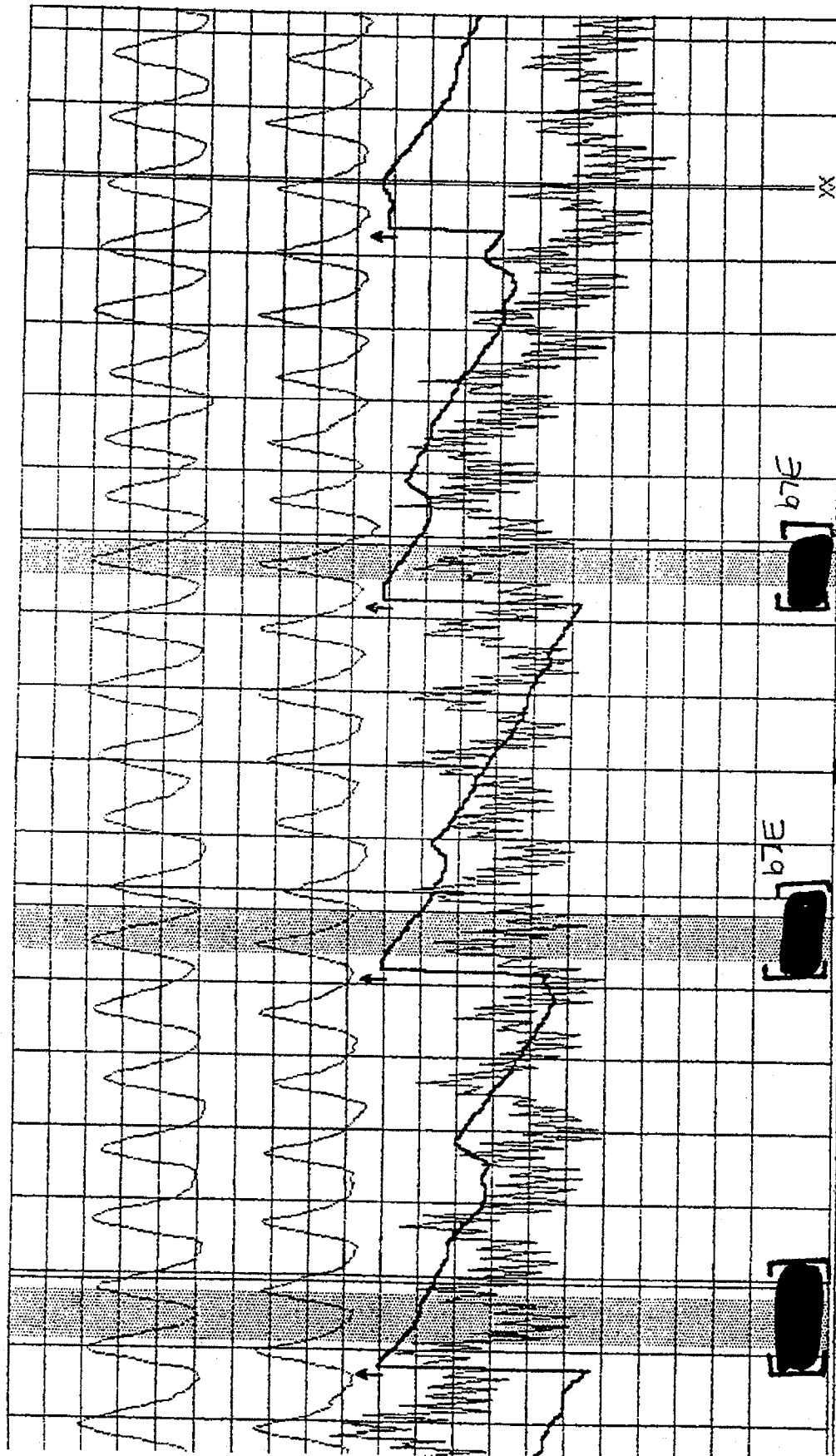
The numerical ratings on these two forms (See Attachments 4 and 5) may be released entirely to first party requesters, however, the examiner's name should be protected pursuant to exemption (b)(7)(C).

When encountering polygraph examinations conducted on third party individuals in FBI investigatory files, who are assumed or known to be living, they should be withheld entirely applying the above exemptions as indicated in addition to exemption (b)(7)(C).

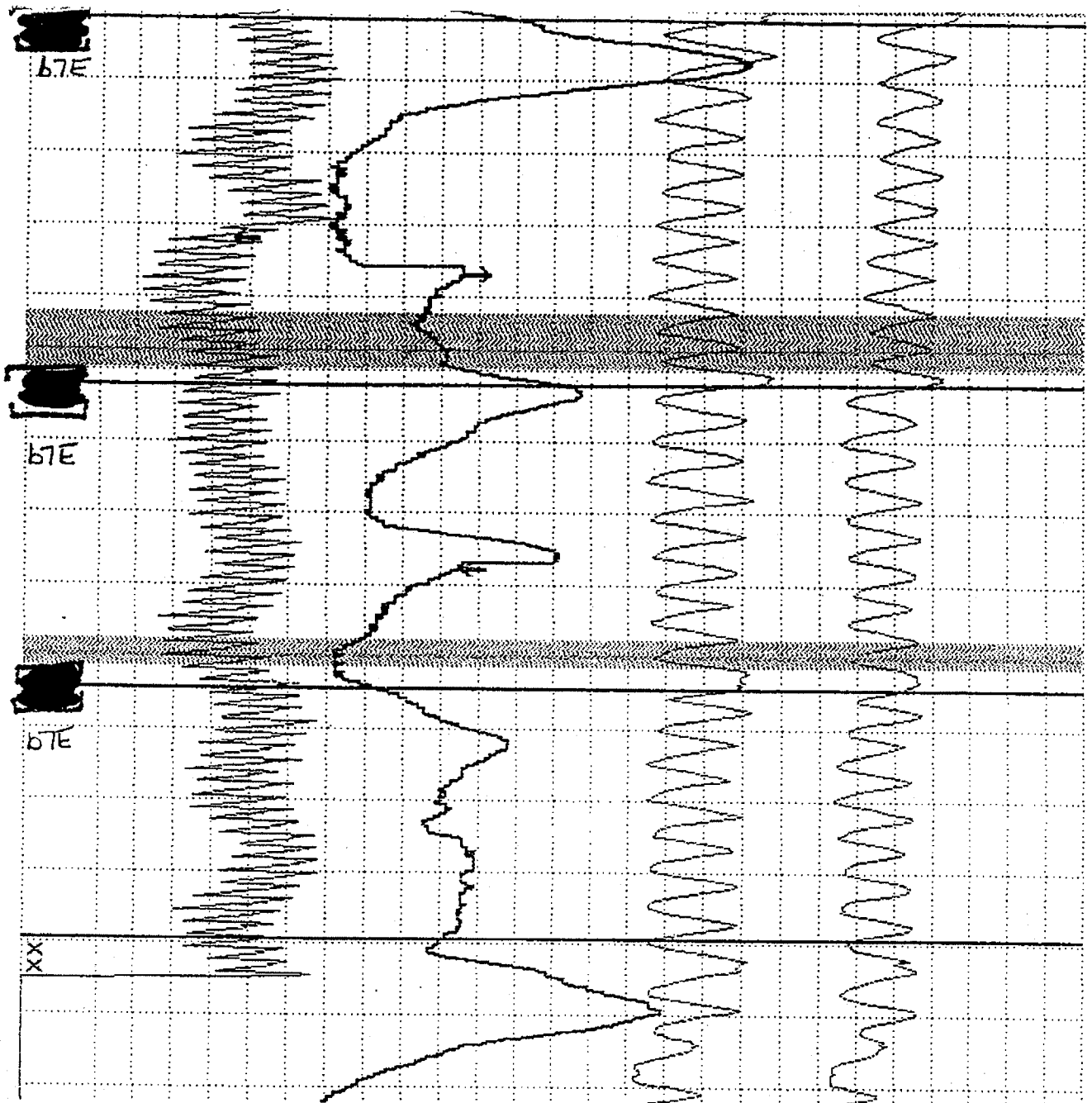
NOTE: The same Polygraph information should be protected as outlined above when processing an applicant/background investigation or personnel type files. The appropriate Privacy Act and FOIA exemptions should be asserted for this information.

Any questions concerning polygraph material should be directed to the Polygraph Unit, Laboratory Division, after consultation with the Team Captain and/or the Unit Chief.

MEMO 71 - ATTACHMENT 1



page 2 of 3		Exam 1 Chart 2 HUGO2		Gains: ID		Start		End (Recorded)		Start		End (Printed)	
b7E		Subject:		[REDACTED]		2.6		2.6		2.6		2.6	
		Examiner:		b7E		1.6		1.6		1.6		1.6	
		Date: Thu, May 22, 1997		b7E		3.4		3.4		3.4		3.4	
		View Size: Normal		b7E		3.5		3.5		3.5		3.5	
		Time Start: 1:29:26 PM		Duration: 4 min 59 sec									
		End: 1:34:25 PM											
		Cuff Pressure Start: 65		End: 64									



PF970014 Exam 1 Chart 5

Subject:

Examiner:

Date: Mon, May 5, 1997

Time: Start: 10:48:29 AM End: 10:53:16 AM

Duration: 4 min 49 sec

Cuff Pressure Start: 58 End: 60

Gains: ID Start End

b7E

6.0 6.0

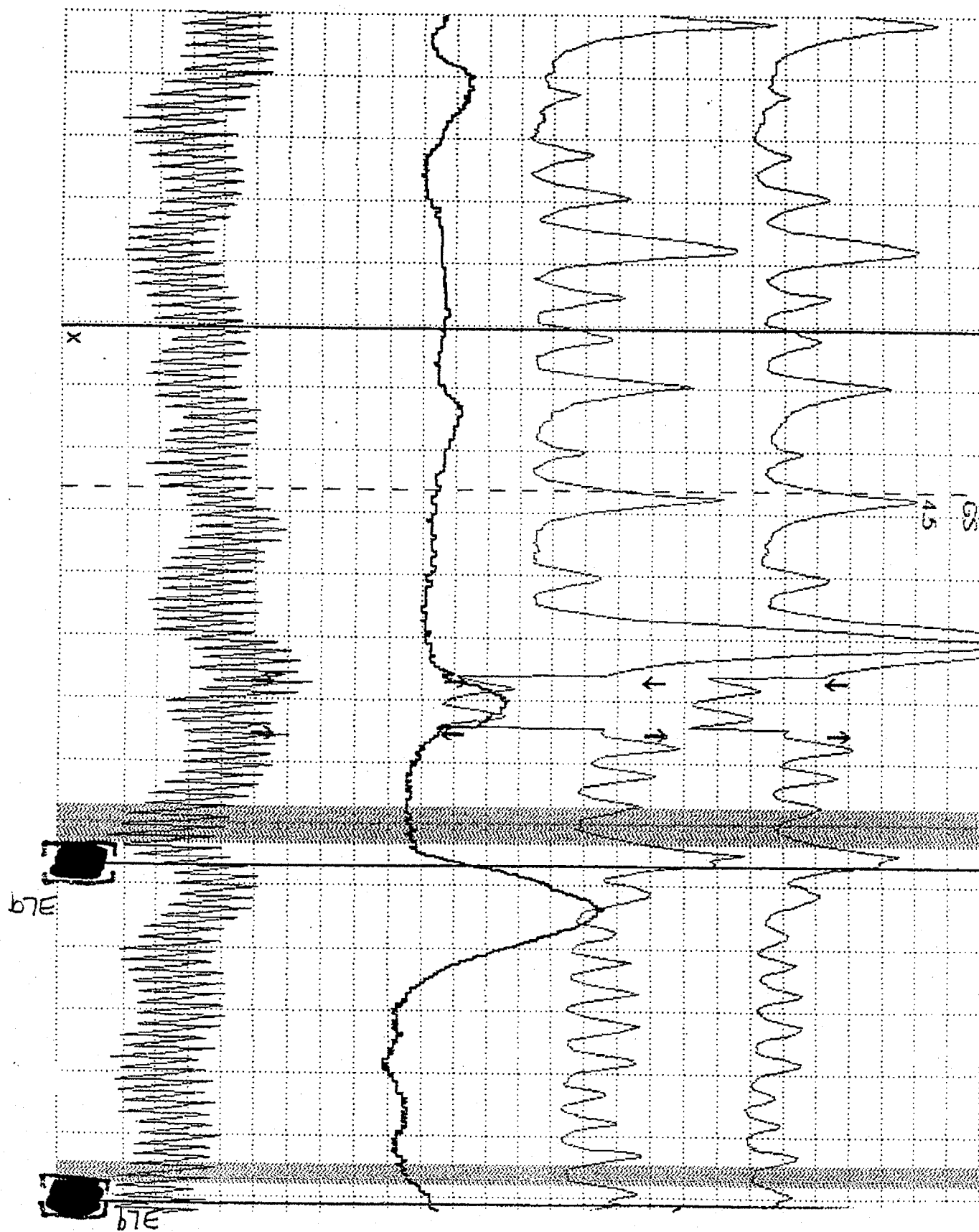
4.0 4.0

5.0 5.0

2.5 2.5

I - 57 # 51 KJP

MEMO 71 - ATTACHMENT 1



PF970014 Exam 1 Chart 1

Subject:

Examiner:

Date: Mon, May 5, 1997

Time: Start: 10:08:41 AM End: 10:12:21 AM

Duration: 3 min 40 sec

Cuff Pressure Start: 60 End: 58

Gains: ID Start End

5.0 5.0

3.5 3.5

3.5 4.5

2.5 2.5

MEMO 71 - ATTACHMENT 1

Polygraph Examination Worksheet

Date of Report		Date of Examination		Bureau File Number		Field File Number	
Location of Examination				Examiner Name			
Examinee Name (Last, First, Middle)						SSN	
Date of Birth		Age	Place of Birth				
HT	WT	Sex	Marital Status		Current Address		
Previous Polygraph Examination			Language During Exam		Requested By Examinee <input type="checkbox"/> Yes <input type="checkbox"/> No		
Education (Total Years _____)							

Employment History/Military

Health/Medication

Arrests/Convictions

Check One Only		FBI EMP/APP		Type of Investigation		Total Examiner Time (Include Travel)	
Subject		Special Agent		Criminal		_____ Hours	
Victim		Support		FCI			
Witness		Translator		Admin. Inquiry		Estimated Property Value	
Suspect		Contract		PSPP			
Asset		Leak Case <input type="checkbox"/> Yes <input type="checkbox"/> No		Applicant			
Informant				WITSEC			
Applicant				Other Federal			
FBI Employee							

Date(s)	Time In	Time Out	Type Test	ZOC	MGQT	R/I	POT	STIM	Total
			No. Series						
			No. Charts						
Instrument Serial No.									

Examination Results

DI		INC		Pretest Admission		Confession	
NDI		NO		Post Test Admission		Confession	

Comments (Name of Witness or Interpreter)

#	Questions	Ans.

MEMO 71 - ATTACHMENT 2 (BACK)

POLYGRAPH REPORT

DATE OF REPORT	DATE OF EXAMINATION	BUREAU FILE NUMBER	FIELD FILE NUMBER
FIELD OFFICE OR AGENCY REQUESTING EXAMINATION			
AUTHORIZING OFFICIAL			DATE AUTHORIZED
EXAMINEE NAME (LAST, FIRST, MIDDLE)			

CASE TITLE

REFERENCES

CASE SYNOPSIS/EXAMINER CONCLUSION

MEMO 71 - ATTACHMENT 3

EXAMINER NAME:

NUMERICAL ANALYSIS SHEET

#1					
PNEUMO					
GRS					
CARDIO					
SUB TOTAL					

EXAMINEE

DATE OF EXAM

#2					
PNEUMO					
GSR					
CARDIO					
SUB TOTAL					

EXAMINER

#3					
PNEUMO					
GSR					
CARDIO					
SUB TOTAL					

REVIEWER

DATE OF REVIEW

PNEUMO					
GSR					
CARDIO					
SUB TOTAL					

COMMENTS

TOTAL					
-------	--	--	--	--	--

MEMO 71 - ATTACHMENT 4

POLYGRAPH REVIEW MODIFIED GENERAL QUESTION TEST NUMERICAL EVALUATION				DATE OF EXAMINATION 12-13-83
EXAMINEE (Last, First and Middle Initial)		EXAMINER NAME (Last, First and Middle Initial)		
CHART NO. 1	Q 23	Q 25	Q 28	Q 29
PNEUMOGRAPH	0	0	0	+1
GALVANIC SKIN RESPONSE	+1	-1	+1	+1
CARDIOGRAPH	-1	0	0	0
SUBTOTAL	0	-1	+1	+2
CHART NO. 2	Q 23	Q 25	Q 28	Q 29
PNEUMOGRAPH	-1	-1	0	+1
GALVANIC SKIN RESPONSE	-1	-1	-1	+1
CARDIOGRAPH	+1	+1	0	0
SUBTOTAL	-1	-1	-1	+2
CHART NO. 3	Q 23	Q 25	Q 28	Q 29
PNEUMOGRAPH	0	+1	-1	0
GALVANIC SKIN RESPONSE	+1	+1	-1	0
CARDIOGRAPH	0	+1	0	+1
SUBTOTAL	+1	+3	-2	+1
SPOT TOTALS	0	+1	-2	+5
REVIEWER (Name)				DATE OF REVIEW

F O I P A
M A N U A L

MEMO 72

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Previously Processed Material, Assignments and Handling of
Date: March 31, 1998

Assignment of Requests for Previously Processed Material

When a request is received for records which have been previously processed, excluding those maintained in the FOIPA Reading Room, the request will be assigned to the PLS who originally processed the documents. If the PLS is no longer assigned to a Disclosure Unit, the request will be assigned to any PLS and there should be no unnecessary delay in handling the request.

Note: Requests for preprocessed files maintained in the FOIPA Reading Room, will continue to be handled by IPU employees.

Referrals Contained in Preprocessed Releases

In order to streamline the handling of preprocessed releases, it will no longer be necessary to coordinate referrals to others government agencies that were made in the initial release. The original processed material should be copied and sent out "as is." If direct response and/or consultation referrals have been noted in the original release, please advise the requester that the referrals were not handled in response to his or her request. Language similar to the following should be used:

"The documents responsive to your request were previously processed for another requester. In order to provide the information you requested as soon as possible, we have released the FBI information as it was originally processed. We have not contacted other government agencies concerning their information in FBI files."

F O I P A
M A N U A L

MEMO 73

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Psychological Services for FBI Employees
Date: March 31, 1998

Psychological Services Provided to the FBI

Doctors [REDACTED] and [REDACTED] b6

Doctors [REDACTED] and [REDACTED], who are no longer under contract with the FBI, previously provided psychological services to Bureau employees as part of the Bureau's psychological services program. As of March 1998, Dr. [REDACTED] on behalf of himself and his wife, Dr. [REDACTED] (Social Worker), requested they be given the opportunity to retain confidentiality on a case-by-case basis. Therefore, Dr. [REDACTED] requested that he or his wife continue to be notified if information provided by them is in a file being processed pursuant to the FOIPA. Dr. [REDACTED] may be contacted at the [REDACTED] at telephone number [REDACTED] or [REDACTED]. Since the current work environment of Dr. [REDACTED] is not conducive to receiving telephone calls, [REDACTED] advised the message could be left with him or a message could be left at their home telephone number [REDACTED], and [REDACTED] would return the call. This notification should be done at the Team Captain level or higher. b6

Thus, if information provided by the Doctors is located in any document being processed by FOIPA Section employees, the doctors should be notified. Unless advised to the contrary by them, the information should be protected by FOIPA exemptions (k)(5)/(b)(7)(D) in order to protect the confidentiality of both doctors. If the information cannot be protected for some reason such as prior public disclosures, the Doctors should be contacted and notified of that fact.

Metropolitan Psychiatric Group

[REDACTED] Metropolitan Psychiatric Group (MPG) telephone 202-452-9080, is currently providing psychological services to FBI employees. Information provided by Dr. [REDACTED] and/or any member of the MPG should be afforded protection for confidentiality purposes pursuant to FOIPA exemptions (k)(5)/(b)(7)(D). Also, should there be situations where a document being processed contains information provided by the MPG about a third party employee, not the requesting employee, the third party information should be protected in its b6

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Page 2

Psychological Services to FBI Employees

entirety for privacy rights of the third party and the confidentiality of MPG pursuant to FOIPA exemptions (k)(5), (b)(7)(D), (b)(6), etc.

Any questions concerning the FBI's psychological services program or specific questions concerning particular cases should be directed to the Unit Chief of the Employment Assistance Program at extension 5244.

F O I P A
M A N U A L

MEMO 74

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Reading Room, FOIPA
Date: March 31, 1998

Reading Room Appointments

The FOIPA Reading Room is open from 8:00 a.m. to 2:30 p.m., by appointment only, Monday through Friday, except holidays. Appointments can be made by requesters calling (202) 324-8057 forty-eight hours in advance. It is staffed by employees assigned to the Initial Processing Unit (IPU).

If you receive a request to view previously processed material that is not on the Reading Room list, please prepare the package and provide the documents to Reading Room personnel before advising the requester to schedule an appointment. All appointments will be made by Reading Room personnel to insure the Reading Room is not over booked.

Adding Previously Processed Material to the Reading Room

Consideration should be given to adding previously processed material to the FOIPA Reading Room if the following applies: the material is processed in such a fashion as to make it releasable to the general public in its excised form; the release could be of interest to a large segment of the general public; and it is anticipated that many additional requests for the information will be received. However, prior to the submission of any material considered for the Reading Room, all direct and/or consultation referrals to other government agencies should have been sent and a response received with the material processed accordingly.

In order to assist in the maintenance of a neatly organized system of Reading Room materials, PLSs are requested to submit their processed materials to their Unit Chief. The material should be placed on a file back with a file cover on top containing notations which accurately describe the material contained therein (i.e., subject matter, file number, number of pages). In voluminous cases, each section should be assembled as described above. Each PLS is responsible for insuring the copy count on the previously processed material is correct and should furnish a copy of the disclosure letter along with the material to Reading Room personnel. The PLS should also prepare an electronic communication (EC) to the Reading Room Subunit describing the material the PLS is forwarding to the Public Reading Room.

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Page 2

Reading Room, FOIPA

Attached hereto are two examples of the EC.

If additional information is being released on Reading Room subjects as a result of reprocessing, appeals or litigations, the Reading Room package should be updated through coordination with Reading Room personnel.

(12/31/1995)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 11/23/1997

To: IPU/Public Reading Room Subunit

From: [REDACTED], Acting Unit Chief

Disclosure Unit One

Contact: [REDACTED] Ext. [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]:crw

Case ID #: 190-4

Title: PLACING FOIA PREPROCESSED MATERIAL
INTO THE READING ROOM

Synopsis: Preprocessed material pertaining to Jackie Robinson is available for placement in the FOIPA Reading Room.

Enclosures: Black-out package consisting of 131 pages and disclosure letter.

Details: The late Jackie Robinson was the first African-American to play major league baseball in the United States. His career spanned ten seasons which began in 1947 until his retirement from the game in 1956. He was elected to the Baseball Hall of Fame in his first year of eligibility, 1962. Mr. Robinson later became an executive in numerous businesses and a member of the New York State Athletic Commission. While serving as a board member of the National Association for the Advancement of Colored People and being associated with many such groups, he was an outspoken civil rights activist who publicly defended the Black Panthers organization. He testified before the House Committee on Un-American Activities in 1949. Mr Robinson died in 1972.

The preprocessed material consists of FBIHQ files 100-428850, 9-24780, 9-20570 and three cross-references. A Department of State document is contained in this package as declassified and excised by that agency. The original processed copies are located in HQ file 190-43620 and 190-62179.

CC: 1 - [REDACTED] Room 6941
1 - [REDACTED] Room 6941
1 - Disclosure Unit One (Attn: [REDACTED]), Room 6927
ATB:crw (5)

MEMO 74 - ATTACHMENT 1 (SAMPLE 1)

(12/31/1995)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 11/23/1997

To: IPU/Public Reading Room Subunit

From: [REDACTED], Acting Unit Chief
Disclosure Unit One

Contact: [REDACTED] Ext. [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]:jsb

Case ID #: 190-4

Title: PLACING FOIA PREPROCESSED MATERIAL
INTO THE READING ROOM

Synopsis: Preprocessed material pertaining to Peter Lorre is available for placement in the FOIPA Reading Room.

Enclosures: Black-out package consisting of 180 pages and disclosure letter.

Details: Peter Lorre was a major motion picture actor during the 1940's and 1950's. He associated with many people who were involved in left-wing activities. Lorre signed petitions, appeared at gatherings and sent his written support for leftist causes. He was the subject of a FBI investigation because of his fringe involvement. His name appeared in a 1951 Report of the Senate Fact-finding Committee on Un-American Activities in California. Peter Lorre died in 1964.

The preprocessed material consists of FBIHQ files 100-351116 (one section) and approximately 100 cross-references. Completed consultation referrals are incorporated into the package. The original processed copies are located in HQ 190-25650 and 190-36269.

CC: 1 - [REDACTED] Room 6941
1 - [REDACTED] Room 6941
1 - Disclosure Unit One (Attn: [REDACTED], Room 6927
ATB:jsb (5)

♦♦

MEMO 74 - ATTACHMENT 1 (SAMPLE 2)

F O I P A
M A N U A L

MEMO 75

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Referrals; General Policy (Federal Government Only)
Date: March 31, 1998

Protection of Sensitive Information in Referral Documents

This is to remind all FOIPA Section personnel of the necessity to protect sensitive information located in FBI documents referred to other government agencies.

When referring Bureau documents containing other government agency information for consultation or direct response to the requester, be alert for documents which may contain particularly sensitive information, such as the true identity of an informant or classified information. In certain situations, neither the FBI informant's identity nor the classified information is needed by the other agency to process their material. Therefore, in these sensitive situations, the information should be redacted prior to referring the FBI document to another agency for review of their information.

**FBI Documents Which Contain Other Agency
Information Which Can Be Segregated from FBI Material**

b2
When processing FBI documents pursuant to the FOIPA, the documents will often contain other Federal Government agency information which, in many instances, is separate or easily segregated from the FBI material. In view of lengthy delays at some agencies in responding to FBI consultations, the document may be prepared for release to the requester with the exception of the other agency information. This procedure applies only where the other agency information is segregable and does not require FBI information that is exempt from disclosure in order to process their information. When referrals are handled in this manner, the requester will be advised of the referral [REDACTED] and that the other Government agency will be requested to process their information and make a direct release to the requester. The other agency will be requested to forward a copy of their response to the FBI. In the event of an appeal and/or litigation, the PLS may be required to contact and follow-up with the other agency if copies of their response have not been forwarded to the FBI.

It should be noted that a copy of the request letter should always be sent to the other agency when a referral is made.

Consultation Referrals Returned from Other Government Agencies

When FBI consultation referrals are returned to the FBI following review by the other agency, they sometimes contain changes in classification. Regardless of whether the classification changes, all consultation referrals returned from other government agencies containing classified information must be returned to DCU for annotation of classification markings desired by the other government agency. The returned referral documents are being treated as walk-ups by the DCU, thus eliminating needless administrative requirements and delays.

Credit for Direct Response Referrals

Effective 7/1/95, PLSs will receive credit for reviewing documents originated by other government agencies. Therefore, the pages referred to other agencies for direct response are to be counted as reviewed pages by the PLS.

When referring documents originated by the other agency, refer only one copy of the document with any FBI information which needs protected blacked out except for the following:

1. CIA - Send two copies of the document (1 black out copy and 1 clean copy)
2. DOJ/Civil Rights Division - Send two copies of the document (1 black out copy and 1 clean copy)
3. DOJ/Criminal Division - Highlight or bracket information to be protected and cite exemption (Do not black out)
4. NSA - Coordinate with PLS assigned to the Unit which handles referrals to NSA

F O I P A
M A N U A L

MEMO 76

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Selective Service System
Date: March 31, 1998

Draft Board Information

Effective 2/14/91, Mr. Henry Williams, Selective Service System, advised Draft Board information pertaining to an individual of a first party request may be released to that individual. Likewise, Draft Board information concerning a deceased individual may also be released to third party requesters. Therefore, **DO NOT refer** Draft Board information to Selective Service concerning deceased individuals.

F O I P A
M A N U A L

MEMO 77

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Special Agent and Support Applicant Interview Forms/Testing Material
Date: March 31, 1998

Special Agent Interview Forms

Effective 7/14/93, there is no longer a need to protect any information in the captioned forms listed below, since they are not being used in the current Special Agent selection system.

FD-190	Special Agent Interview Form
FD-511	Special Agent Dimension Evaluation Work Sheet
FD-510	Special Agent Applicant Interview Board Background Interview Form

Since the implementation of the new Special Agent selection system in August of 1994, no testing material of any kind is being maintained in the applicant's personnel record (67 classification). This material is securely stored in Personnel Resources Unit (PRU) for a time period of one year, at which time, it is transferred to an off-site location for an additional year. At the end of this two-year period, all testing material on a Special Agent Applicant is destroyed. When processing a personnel file, if it appears that any testing material from the Special Agent selection process is included in the background portion of the file, contact the Unit Chief of the PRU immediately on extension 4991. **DO NOT PROCESS OR RELEASE** any of this material.

"Checklists" of the material contained in testing packages are occasionally found in the Special Agent applicant file. One such "checklist" is the **Checklist for Health Fraud Written Simulation** form. If this check list is found in the applicant file, the PLS should cite the appropriate exemption for testing material. Other "checklists" of testing packages found in the applicant file should be reviewed for disclosure on a case-by-case basis.

The FBI started audio taping the interview process of Special Agent applicants during 1995. The applicant is advised of this before the start of the interview. If the cassette tape is located in the personnel file during processing, contact the Unit Chief of PRU on extension 4991. **DO NOT PROCESS OR RELEASE** this tape.

Support Applicant Interview Forms

If the LT/PLS finds the Support Applicant Interview Form (FD-190a) in the background portion of a personnel file with a revision date prior to 9/4/96, the form is to be released in its entirety with the exception of any FBI employees names which should be protected pursuant to the appropriate FOIPA exemptions. Currently, the 9/4/96 revised version contains specific interview questions, responses and ratings which, if released, would give an unfair advantage to future support employee applicants. Therefore, this information on the current version of the FD-190a should be exempted as testing material. If the current version of this form is found in the personnel file during processing pursuant to an FOIPA request, the form should be removed and sent to PRU at Room PA-750. A copy of the FD-190a dated prior to 9/4/96 is attached.

In addition, any Clerical Selection Battery (CSB) interview documents (e.g., FD-799 and FD-800) should not be contained in any personnel files since field offices are instructed to send these to the PRU for maintenance and destruction (after two years). However, PRU is aware that the CJIS Division in West Virginia made copies of all their interviews and included them in packages submitted to the Applicant Unit for background investigations. These interviews are removed from the files as detected, but there are of some CSB documents that remain in the personnel files. In the event these documents are found in personnel files when processing pursuant to an FOIPA request, they should be removed and sent to PRU at Room PA-750.

During 1997, the FBI started audio taping the interview process of support applicants. The applicant is advised of this fact before the interview is started. If the cassette tape is located in the personnel file at the time of processing, the tape should be removed from the file and sent to PRU at Room PA-750. DO NOT PROCESS OR RELEASE this tape.

bl When the FBI receives a Privacy Act request for material related to the Special Agent or clerical applicant testing and interview process, IPU personnel will place a note (copy attached) in the request folder confirming they advised PRU of the existence of the request. When processing such a request, the PLS should contact either [REDACTED] Unit 2, extension 4-[REDACTED] or [REDACTED] Unit 3, extension 4-[REDACTED] who have been designated as liaisons to review this restricted material. These individuals will verify that the material is responsive, provide a page count and advise as to the releasability of the material.

F O I P A

M A N U A L

MEMO 78

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Special Agent and Support Employee Names and Initials
Date: March 31, 1998

INITIALS OF FBI EMPLOYEES

Effective May 6, 1997, the initials of FBI employees, both handwritten or typed, will no longer be deleted as a routine practice, but rather handled on a case-by-case basis. Consideration should be given to the age and type of investigation as well as the likelihood of retribution by the requester or others involved in the investigation. If it is determined that there is a foreseeable harm in the release of the initials and the decision is made to protect them, Exemptions (b)(2) and/or (b)(7)(F) should be cited.

NAMES OF FBI EMPLOYEES

In general, names of FBI personnel should continue to be withheld pursuant to Exemptions (b)(6) and/or (b)(7)(C). However, in processing documents for release, the names of high level FBI officials (Section Chief level and above) should be released. Additional exceptions to releasing FBI names other than high level officials would be: 1) if a case involved reporting of the news media and wide publicity was given to the case and the FBI employee; 2) if the FBI employee is deceased; or 3) the requester has provided sufficient information which would make withholding the name impossible to justify if challenged in Court.

FBI Employee Names Located in Personnel Files

In accordance to Section policy, the applicant background portion of personnel files is to be exempted from the Privacy Act pursuant to (k)(2). Therefore, when processing this portion of the personnel file, the names of FBI employees who are operating in their official capacity (other than high level officials) should be protected pursuant to exemption (b)(7)(C).

FBI employee names located in the "on board" portion of personnel files should be released in most instances unless a clearly unwarranted invasion of personal privacy exists. If a privacy factor is warranted, the withheld information should be identified as "third party"

FOIPA Numbered Memo 78

Page 2

Special Agent and Support Employee Names and Initials

information along with Exemptions (b)(6) and/or (b)(7)(C) being cited. The following language should also be included on the disclosure letter:

"The documents responsive to your request contain personal information about other individuals, without whose written consent release to you is precluded by the Privacy Act, Title 5, United States Code, § 552a(b). This information is exempt under the Freedom of Information Act, Title 5, United States Code, § 552 (b)(6) and/or (b)(7)(C). This information was not used by the FBI to make any determination about you.*"

*The last sentence may not be appropriate for every release; use it at your discretion.

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Special File Room
Date: March 31, 1998

**Procedures for FOIPA and DCU Access to Material
Maintained in the Special File Room (SFR)**

Material maintained in the SFR is considered extremely sensitive for a number of reasons; consequently, access to this material must be limited and strict controls maintained.

Recognizing the need to process such material in accord with the FOIPA and the necessary classification reviews in connection therewith, the following procedures for access to this material must be followed:

(1) When the LT/PLS calls a file that is maintained in the SFR, he/she will be advised that the file is **permanently charged out** or a **PCO**. When this happens, the LT/PLS should wait for the SFR to advise him/her to pick up the file(s) in Room [REDACTED] b2

(2) The handling of the material while charged out from the SFR must be restricted only to those employees having a "need to know." If the file(s) is kept out of the SFR overnight, it must be secured in a safe-like cabinet.

(3) If the material needs to be processed through the DCU, the LT/PLS should fill out the OPCA-18 form listing the file(s) needing review and indicate after the file number "**file is in the SFR, June Mail folder or Top Secret folder.**" The LT/PLS will return the file/folder to the SFR. **The file/folder maintained in the SFR can not be transferred from person-to-person or office-to-office.** The DCU employee handling the classification review will obtain the file/folder from the SFR for their review. Upon completion of the classification review, DCU will forward the OPCA-18 form with their addendum to the LT/PLS and return the file/folder to the SFR.

(4) When it is necessary to duplicate SFR material for FOIPA processing, the material must be returned to the SFR with OPCA-19 form (formerly 4-690), duplication form, attached indicating exactly what is to be duplicated. The SFR will call the LT/PLS when the duplication is completed.

FOIPA Numbered Memo 79

Page 2

Special File Room

(5) If copies are made for processing, the copies must also be secured overnight in a safe-like cabinet.

(6) When the PLS closes a case which includes a copy of material from the SFR, the PLS should hand carry the disclosure letter and all of the processed documents to the SFR for filing. If the PLS referred a copy of a document(s) maintained in the SFR to another Federal Government agency and is attaching a copy of the referred document(s) to the yellow of the referral form, the referral with enclosure must also be sent to the SFR for filing. This also applies to any referral response enclosing a copy of a document(s) maintained in the SFR. All other FOIPA mail should be sent to the 190 Processing Subunit in IPU.

(7) All material from the SFR must be hand carried to and from the SFR.

Review of Special Compartmentalized Information (SCI) Material

Special security clearances are required to review or handle certain "Top Secret" files or documents which contain SCI material. If the LT/PLS is notified by the SFR that he/she does not have the appropriate clearance to review the classified material requested, one of the following PLSs should be contacted to conduct the review. It is recommended that the individual contacted be from the same unit as the PLS handling the case.

Disclosure Units:

[REDACTED] Unit 1
[REDACTED] Unit 4

[REDACTED] - Unit 3

Litigation Unit:

[REDACTED]

Help Desk:

[REDACTED]

b6

DCU:

All Team Captains in DCU are afforded SCI clearances. However, should there be any questions concerning classification matters on a case prior to DCU review, the LT or PLS should initially contact the DCU Administrative Team Captain.

RMU:

Currently, there are no RMU employees with an SCI clearance. If an RMU employee has been advised by the SFR that they do not have the proper clearance to review the file material, they should contact one of the Disclosure PLSs listed above.

F O I P A
M A N U A L

MEMO 80

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Subpoena Duces Tecum
Date: March 31, 1998

**Attorney General Notification to Agent Personnel in Response to
Issuance of Subpoena Duces Tecum**

By memorandum dated 6/21/82, the Office of Information and Privacy (OIP), Department of Justice advised that it was no longer necessary for the FBI to refer to OIP for processing copies of routine notifications sent from the Attorney General to SACs and/or Agents concerning their appearance in a local court in response to a Subpoena Duces Tecum. Generally these notifications are in the form of a teletype from the AG to a named SAC and specified Agents within the Field Office who have been requested to appear in a local court to testify about and/or produce information contained in Departmental files, including those of the FBI. The AG's teletype states that if the AUSA is unsuccessful in quashing the subpoena, the Agent(s) is authorized to appear pursuant to the subpoena, but directs that they respectfully refuse to testify or produce any documents in compliance with Departmental Order 381-67.

Referral of these notifications need not be made to OIP so long as they contain no other substantive information and the only material being deleted is the name of a Special Agent.

Subpoena Duces Tecum Statements

At times, FBI documents may contain information obtained from sources such as financial or commercial institutions which may not be generally available to the public. In these instances, the source (i.e., financial institution, etc.) may provide the information to the FBI, however, may use the disclaimer to the effect that "this information may not be released to the public in general without the issuance a subpoena duces tecum." When this statement or a statement similar to this appears in an FBI document, the information and the source should be protected pursuant Exemption (b)(7)(D) and be considered as an expressed grant of confidentiality.

F O I P A
M A N U A L

MEMO 81

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Substantial Equivalents of Main Files
Date: March 31, 1998

Pursuant to the searching procedures established by the Initial Processing Unit (IPU) in February 1997, "main file equivalents" will be listed on the search slips.

A "substantial equivalent of a main file" exists when the subject matter of a FOIPA request is included in, or indexed as, the subject of a serial or reference in one or more of the following classifications or files:

All - 0s	105-7
All - 62s	105-16424
All - 63s	105-70374
64-32001	105-93124
65-69260	105-99938
All - 66s	105-174254
All - 94s	105-190290
100-3-Sub 104	121-1
100-358086	140-1
100-434445	157-6-Subs
100-436291	157-9
100-446533	174-1
100-448006	174-2
100-449698	174-3
105-1	

These are serials or references which, by their nature, could logically establish a main file on their own. It should be noted that the nature of the information in the document, not the method of filing it, determines whether or not it is a "substantial equivalent."

When the search slip contains what appears to be a "cross-reference" in one of the above-listed classifications or files, it must be reviewed and determined if it is responsive to the subject of the FOIPA request. If the serial/reference meets the above criteria and is responsive to the request, it will be processed for disclosure as a main file.

F O I P A
M A N U A L

MEMO 82

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Telephone Application
Date: March 31, 1998

b2
b7E
The Telephone Application (TA), formerly known as the Computerized Telephone Number File (CTNF), supports FBI investigative squads in collecting, analyzing and processing telephone data obtained during investigations. [REDACTED]

The main value of using the TA is the ability [REDACTED]

b2
b7E

When processing a FOIPA request that contains information which refers to TA or the former CTNF, the mere mention of these systems should be protected pursuant to Exemption (b)(7)(E) since they are not systems of records and their use is not generally known to the public. In addition, all FBI information or documents that reflect or denote what information or the type of information that has been entered into these systems such as the FD-450 (Attachment 1) should be denied from public disclosure pursuant to the same exemption.

(Best Copy Available)

FD-450 (Rev. 10-25-73)

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-108

UNITED STATES GOVERNMENT

Memorandum

COMPUTERIZED TELEPHONE NUMBER FILE (CTNF) - ENTRY AND SEARCH REQUEST

TO : Director, FBI
Attn: Data Processing Section

DATE:

FROM : SAC

SUBJECT:

1. Subject's Name _____

Field Office _____ Field File # _____

Actions: ☐ Add to file Area Code _____ Telephone # _____
☐ Modify Record (Indicate modifications under "Remarks" below; always list current CTNF telephone number.)
☐ Delete from file Area Code _____ Telephone # _____

By: Subordinate's: _____ Telephone Located at: Of different from subscriber?

2. Process in CTNF:

- ☐ Telephone data enclosed, or ☐ sent under separate cover
- a. ☐ Telephone Data Analysis - ☐ billing statements ☐ phone toll tickets ☐ other (specify) _____
☐ Telephone data for period (including month and year) _____
☐ Billing number(s) including area code, city and state _____
- b. ☐ Telephone Number Check (If just one or more phone numbers to be searched against CTNF, insure area code and end/or city and state included.)

Remarks:

MEMO 82 - ATTACHMENT 1

☐ Enclosure

FOR FBI HEADQUARTERS' USE ONLY

☐ RETURN TO SAC, _____ Date _____

- ☐ MY LIST - ☐ Attached ☐ Forwarded under separate cover _____ File
☐ "TO AND BILLING NUMBER" LISTINGS - ☐ Attached ☐ Forwarded under separate cover
☐ TELEPHONE NUMBERS MARKED BY *** ON BILLING STATEMENT not processed because ☐ ILLEGIBLE ☐ INSUFFICIENT DATA
☐ ACTION TAKEN - ☐ Add ☐ Delete ☐ Record modified ☐ Telephone data analysis
☐ BILLING NUMBER - ☐ Included ☐ Not included in CTNF

☐ Enclosure

F O I P A

M A N U A L

MEMO 83

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Third Party Requests/Third Party Information
Date: March 31, 1998

Third Party Requests/Information

If a person makes a request for information concerning himself, this is referred to as a "first party" request. If a person makes a request for information about another person, an organization, or incident, this is referred to as a "third party" request. Personal information concerning someone other than the requester, whether in files responsive to first or third party requests, may be described as third party information. Third party requests and third party information should be processed pursuant to the following instructions.

Third Party Requests

If a person makes a request for the records of a third-party and the requester provides proof of death or the authorization (privacy waiver), IPU will acknowledge the receipt of the third-party request, conduct a search for records and handle accordingly.

If IPU receives a request for records concerning a widely acknowledged investigation concerning a third party (i.e., O.J. Simpson), and the requester does not provide proof of death or the authorization (privacy waiver), IPU will send a letter to the requester advising that the FBI needs either proof of death or the authorization from the subject of their request, and without either one or the other, only public source material such as court records, newspaper clippings, etc., will be processed for release. The requester is also advised to let the FBI know in writing if public source material is desired (See Attachment 1).

If a person makes a request for records concerning an investigation pertaining to a third party that is not widely acknowledged, and neither proof of death nor the authorization are provided, IPU will send a letter to the requester advising that either proof of death or the authorization must be submitted. The letter also advises the requester that without either of the above, such records, if they exist, are exempt from disclosure pursuant to Exemptions (b)(6) and (b)(7)(C) of the FOIA, Title 5, United States Code, Section 552 (See Attachment 2).

Third Party Requests/Third Party Information

Proof of Death

The guidelines concerning the proof needed before processing and releasing records about a subject whom the requester asserts is dead are as follows:

1. The subject of a third party request should be presumed to be alive unless there is a record confirming death. The record of death can be a death certificate, obituary, or recognized reference source (e.g., Who Was Who in America).
2. A mere assertion by a requester that a subject is dead is not sufficient proof of death.
3. Death can be presumed if the requester asserts the subject is dead, and there is proof that the subject is at least 100 years old.
4. If our own records establish death, then that is satisfactory.

Waivers of Privacy

Waivers of privacy require careful analysis, since there is significant potential for an inadvertent violation of the Privacy Act's disclosure prohibitions if a waiver is interpreted inaccurately or if a waiver is insufficient. A waiver does not authorize anything more than what is stated in the waiver itself. The waiver should be compared with the request letter to ensure that a limited waiver is not misquoted by the requester. If any aspect of the waiver is not clear, the request should be brought to the attention of supervisory personnel for additional review.

Waivers of personal privacy must be signed by the person waiving privacy, preferably in the presence of a notary, must specifically identify the person waiving privacy (including full name, date of birth and present address), and must be specifically directed to the FBI, permitting the FBI to release personal information (about the person executing the waiver) from its files. The waiver should be dated within a reasonable time period preceding the request, and the original copy of the waiver must be provided to the FBI.

Third Party Information

Information in FBI files concerning third parties which has not been provided by the requester, and which is not outweighed by a public interest in disclosure, should be denied pursuant to Exemption (b)(7)(C). An exception to this general standard will involve historical processing, wherein substantive information concerning third parties may be considered for released.

FOIPA Numbered Memo 83

Page 3

Third Party Requests/Third Party Information

Information in FBI files concerning third parties which has been provided by the first party requester will be processed to protect the identity of the third parties pursuant to Exemption (b)(7)(C). This may require the redaction of the third party's name, or it may require the redaction of significant portions of the substantive information, if an identifiable profile would otherwise be revealed. Although considerable flexibility and judgement will be required to determine how much information can be released without identifying the third party, the standard should be to protect all information which would identify the third party to a member of the public who does not have inside information about the case. The special knowledge of an individual requester should not be considered. This balances the right of a first party requester to know what information a governmental agency may have recorded from his own statements to that agency, while still protecting the privacy interests of persons who have been mentioned in or been the subject of an investigation.

Third party information in government files being processed pursuant to a first or third party request must be weighed between the public's right to know and the individual's right to privacy. In balancing the public interest in disclosure against personal privacy rights of individuals, the reviewer should first determine that a right of privacy exists. Unless the information at issue can significantly contribute to a public understanding of government operations and activities, the privacy interest should prevail and disclosure of more than public source information in widely acknowledged cases would be unwarranted. For additional information concerning the balancing of interests in personal information, see FOIA Update, Vol. X, No. 2, Spring 1989 edition, published by the Office of Information and Privacy, U.S. Department of Justice (See Attachment 3).



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

Request No. _____

Re: _____

Dear Requester:

The records responsive to your Freedom of Information Act (FOIA) request pertain to the investigation of third party individuals. In order to process any records other than public source material, we need either proof of death or the authorization (privacy waiver) from them. The only information subject to processing under the FOIA without either of the above would be public source material (court records, newspaper clippings, etc.). Such material may or may not be contained in our records.

If you want us to search for any releasable public source information responsive to your request, please let us know in writing. In addition, to ensure an accurate search of our indices, please provide the complete name, as well as the date and place of birth of the subject or subjects involved in the investigation if you have not already done so.

Proof of death can be a copy of a death certificate, obituary, or a recognized reference source. We ask that waivers of personal privacy be notarized. Waivers must specifically identify the person waiving privacy (including full name, date and place of birth, and present address), and must be specifically directed to the FBI, permitting the FBI to release personal information from its files about the person executing the waiver. The waiver should be dated within a reasonable time period preceding the request, and the original copy of the waiver must be provided to the FBI.

Without proof of death or appropriate authorization, the disclosure of law enforcement records or information about another person is considered an unwarranted invasion of personal privacy. Such records are exempt from disclosure pursuant to exemptions (b) (6) and/or (b) (7) (C) of the FOIA, Title 5, United States Code, Section 552.

You may submit an appeal from any denial contained herein by writing to the Co-Director, Office of Information and Privacy, U. S. Department of Justice, Suite 570, Flag Building, Washington, D. C. 20530, within 30 days from receipt of this letter. The envelope and letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIA request number assigned to your request so that it may be easily identified.

Sincerely yours,

J. Kevin O'Brien, Chief
Freedom of Information-Privacy
Acts Section
Office of Public and
Congressional Affairs

U.S. Department of Justice



Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.

Washington, D.C. 20535-0001

Subject of Request: _____

FOIPA No.: _____

Dear Requester:

A copy of your letter asking for information maintained by the FBI under the Freedom of Information Act (FOIA) concerning another individual(s) is being returned to you.

Before we commence processing your request for records pertaining to another individual(s), we ask that you submit to the FBI either proof of death or a privacy waiver from that person. Proof of death can be a copy of a death certificate, obituary or a recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago. Without proof of death or a privacy waiver, the disclosure of law enforcement records or information about another person is considered an unwarranted invasion of personal privacy. Such records, if they exist, are exempt from disclosure pursuant to Exemptions (b)(6) and/or (b)(7)(C) of the FOIA, Title 5, United States Code, Section 552.

Enclosed is a Privacy Waiver and Certification of Identity form. (You may make additional copies if you are requesting information on more than one individual.) The subject of your request should complete this form and then sign it, preferably in the presence of a notary. The original privacy waiver must be provided to the FBI.

In order to ensure an accurate search of our records, please provide your subject's complete name, date of birth and place of birth, if you have not already done so.

Once you have provided us with the necessary information, as described above, we will conduct a search of our records and advise you of the results.

This response should not be considered an indication of whether or not records responsive to your request exist in FBI files.

You may submit an appeal from any denial contained herein by writing to the Co-Director, Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001, within 30 days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIA number assigned to your request so that it may easily be identified.

Sincerely yours,

Chief
Freedom of Information-
Privacy Acts Section
Office of Public and Congressional Affairs

All Attached Correspondence Must Be Returned To The FBI With This Letter

Enclosure

MEMO 83 - ATTACHMENT 2

Privacy Waiver and Certification of Identity

Full Name: _____

Current Address: _____

Date of Birth: _____ Place of Birth: _____

Under penalty of perjury, I hereby declare that I am the person named above and I understand that any falsification of this statement is punishable under the provisions of Title 18, United States Code (U.S.C.), Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years, or both; and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of Title 5, U.S.C., Section 552a (i)(3) as a misdemeanor and by a fine of not more than \$5,000. I hereby waive my right to privacy, and I authorize the FBI to release any and all information relating to me

to: _____
(Attorney or other Designee)

Your Signature: _____

Subscribed and sworn to before me, this _____ day of _____,
year of 19 _____

Signature of Notary: _____

My Commission Expires: _____

Notary Seal or Stamp

FOIA Counselor

MEMO 83 - ATTACHMENT 3

Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking

The Supreme Court's decision in Department of Justice v. Reporters Committee for Freedom of the Press, 109 S. Ct. 1468 (1989), greatly affects the protection of personal privacy interests under the Freedom of Information Act. The new guiding principles set forth in Reporters Committee, which are applicable to Exemption 6 and Exemption 7(C) of the Act alike, alter the mechanics of the basic "balancing process" by which privacy-protection decisions are to be made under these exemptions. Below is a step-by-step guide to the decisionmaking process that now should be followed under both Exemption 6 and Exemption 7(C):

STEP ONE: DETERMINE WHETHER A PERSONAL PRIVACY INTEREST IS INVOLVED.

The first step in considering the possible applicability of Exemption 6 or Exemption 7(C) (once its threshold requirement is passed) is to determine whether disclosure would threaten a personal privacy interest. There first must be a viable privacy interest in the requested information for any further consideration of privacy-exemption protection to be appropriate. See, e.g., FOIA Update, Summer 1986, at 3-4. Remember: To qualify, the information must involve the privacy interest of an identifiable, living person. See FOIA Update, Sept. 1982, at 5. Possible Result: If no personal privacy interest is involved, then the privacy exemptions do not apply.

STEP TWO: DETERMINE WHETHER A PUBLIC INTEREST IS INVOLVED.

Once a viable personal privacy interest is identified, the inquiry shifts over to the "public interest" side of the balance. Here, full consideration should be given to how disclosure would benefit the general public, but only in light of the content and context of the information in question. Remember: The requester's particular purpose, circumstances, and proposed use no longer are to be considered; this means that a requester's own "socially useful purpose" now receives no special attention. 109 S. Ct. at 1480-81 & n.20. Possible Result: If disclosure to the general public would serve no public interest at all, then any identified privacy interest should be protected under the applicable privacy exemption.

STEP THREE: DETERMINE WHETHER AN IDENTIFIED PUBLIC INTEREST QUALIFIES FOR CONSIDERATION.

The next step, required now for the first time under Reporters Committee, is to determine whether an identified public interest actually

qualifies for balancing under the new Reporters Committee public interest standard. See 109 S. Ct. at 1482. Remember: Only if an identified public interest falls within the Act's "core purpose" of "shed[ding] light on an agency's performance of its statutory duties," does it qualify for inclusion in the balancing process. *Id.* at 1481-83. Information that "reveals little or nothing about an agency's own conduct" does not meet this narrowed public interest standard. *Id.* at 1481. Possible Result: If disclosure would serve no "core purpose" interest, then any identified privacy interest should be protected under the applicable privacy exemption.

STEP FOUR: BALANCE THE PERSONAL PRIVACY INTEREST AGAINST ANY QUALIFYING PUBLIC INTEREST.

Lastly, if it is determined that a public interest qualifying under the Reporters Committee standard is present, then that interest should be balanced against the personal privacy interest identified at the outset. This balancing process necessarily requires some assessment and comparison of the relative magnitudes of the two interests. See, e.g., FOIA Update, Winter 1986, at 4. Remember: At this stage, the decisionmaking process becomes the same as the one traditionally employed under the Act's privacy exemptions. See FOIA Update, Spring 1988, at 3. Possible Results: If the privacy interest is greater, then it should be protected under the applicable privacy exemption; if the public interest is greater, then the privacy exemptions do not apply.

Additional Considerations

In following this step-by-step decisionmaking process, certain additional considerations, which will apply in some cases, should be kept in mind. First, any public availability of the information in question will disqualify it from privacy protection only where it fails the new "practical obscurity" standard. See 109 S. Ct. at 1485. Second, the redaction of all identifying information sometimes will be sufficient to protect privacy interests, sometimes not, depending upon the nature of the records in full context of the request. See, e.g., Carter v. Department of Commerce, 830 F.2d 388, 391 (D.C. Cir. 1987); see also FOIA Update, Spring 1986, at 2. Finally, some information, as with the "rap sheets" sought in Reporters Committee itself, may be appropriate for "categorical" withholding. See 109 S. Ct. at 1483-85; see also FOIA Update, Spring 1989, at 6.

F O I P A
M A N U A L

MEMO 84

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Undercover Operations
Date: March 31, 1998

The recording of an undercover contact is usually made on an FD-302 by the office responsible for the undercover operation and since the targets/subjects may reside or work anywhere in the country, copies of the FD-302 may appear in substantive files of other field offices. The contact with the subject may have been productive or unproductive; prosecution may have ensued or the investigation of the individual may have been closed. The undercover operation which generated the contact, however, could still be operative.

The FD-302 may be prefaced in the following manner: "On (date) SA (Name), using the undercover name (Name), contacted (Subject) at (Address), etc." References to the contact, however, could appear in any format or communication.

An unintentional disclosure of information regarding the contact to the subject could jeopardize an ongoing operation and the agents who are in contact with other individuals known to the subject of the closed case.

To prevent this possibility, the Undercover Operations Unit, Division 6, as well as the office responsible for the undercover operation, should be contacted to determine if the operation is still functional and if disclosure of the document in question would jeopardize the operation.

F O I P A
M A N U A L

MEMO 85

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Visual Investigation Analysis (VIA) Chart
Date: March 31, 1998

Visual Investigation Analysis (VIA) Chart

The VIA chart, which is prepared by the VIA Group of the Criminal Investigative Division, is one continuous roll of paper and its size is determined only by the complexity of the case. It is utilized in rather large cases, especially white-collar investigations, to show all important events in a case.

For example, during the processing of a field office file pertaining to a kidnaping investigation, a VIA chart measuring 1½ feet in width by 35 feet in length was located. Neither the field office, nor FBIHQ, had a machine capable of reproducing a document of this size. At the suggestion of the VIA Group, a memo was written from Division 4 to Division 6 requesting reproduction of the chart. Thereafter, the chart was reproduced by the VIA Group at another Government agency having a machine capable of photocopying this document. The duplication fee incurred by FBIHQ was 39 cents per foot, which was passed on to the requester. Since the chart required the assertion of FOIPA exemptions, a second copy was prepared in excised form which was feasible for maintaining in the 190 file.

In the past, the VIA charts were retained by the VIA Group. However, they are now being incorporated into FBIHQ files and may be encountered by PLSs as a bulky enclosure to the main file. These charts are merely a recapitulation of information contained elsewhere in the file, are difficult to reproduce, and may contain exempt material. PLSs who receive requests for VIA charts or who locate one of the charts while processing either FBIHQ or field office files are to ensure that the Disclosure Unit Chief and/or the FOIPA Section Chief is notified prior to any processing. In most instances, it may be more practical to first advise the requester of the duplication fees involved, since there could be an exorbitant charge, or there may be no additional substantive information available for release on the chart.

F O I P A

M A N U A L

MEMO 86

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: White House Referrals and Consultations
Date: March 31, 1998

The following is the full text of a memorandum sent by Associate Attorney General Webster L. Hubbell to the principal FOIA administrative and legal contacts at all federal agencies on November 3, 1993, regarding the FOIA consultation procedures required for any White House-originated record or information found in agency files:

"The purpose of this memorandum is to set forth the procedures to be followed by all federal agencies for the handling of any White House-originated record or information that is found responsive to an access request made under the Freedom of Information Act, 5 U.S.C. § 552 (1988).¹"

"In processing FOIA requests, agencies searching for responsive records occasionally find White House-originated records (or records containing White House-originated information) that are located in their files. These records raise special concerns, including questions of executive privilege, and require special handling--particularly in light of the White House's unique status under the FOIA."

"By its terms, the FOIA applies to "the Executive Office of the President," 5 U.S.C. §552(f), but this term does not include either 'the President's immediate personal staff' or any part of the Executive Office of the President 'whose sole function is to advise and assist the President.' Meyer v. Bush, 981 F.2d 1288, 1291 n.1 (D.C. Cir. 1993) (quoting H.R. Rep. No. 1380, 93d Cong., 2d Sess. 14 (1974)); see also, e.g., Soucie v. David, 448 F. 2d 1067, 1075 (D.C. Cir. 1971). This means, among other things, that the parts of the Executive Office of the President that are known as the 'White House Office' are not subject to the FOIA; certain other parts of the Executive Office of the President are."

"In coordination with the Office of the Counsel to the President, the Department of Justice has determined that agencies should implement the following FOIA procedures regarding all White House related records or information found in their files. Please note that these procedures prescribe 'consultations,' which do not involve a transfer of administrative responsibility for

¹This memorandum supersedes the Department of Justice's January 28, 1992 memorandum on this subject.

FOIPA Numbered Memo 86

Page 2

White House Referrals and Consultations

responding to a FOIA request, as distinct from complete record 'referrals.'² In all instances involving White House records or information, your agency will be responsible for responding directly to the FOIA requester once the process of consultation is completed."

"1. Records originating with any part of the 'White House Office'³ should be forwarded to the Office of the Counsel to the President for any recommendation or comment it may wish to make, including any assertion of privilege, prior to your response to the FOIA requester. Please be sure to advise the White House Counsel's Office of any sensitivity that these records have from the perspective of your agency and whether you believe any FOIA exemption applies. If after considering the possibility of discretionary disclosure in accordance with the Attorney General's FOIA Memorandum of October 4, 1993, you believe that a FOIA exemption applies, you should mark each record accordingly to facilitate review by the Counsel's Office of your proposed response."

"All such consultation communications should be forwarded to the White House Counsel's Office at the following address:

Office of the Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

"Please note that many records originating with the White House Press Office, such as "Press Briefings" and "White House Talking Points" (unless they are marked as, or appear to be drafts), are in the public domain and thus may be disclosed without consultation. Questions concerning records likely to be in the public domain should be referred to the White House

²"See FOIA Update, Summer 191, at 3-4 ('OIP Guidance: Referral and Consultation Procedures') (further discussing differences between these two procedures).

³"The 'White House Office' includes, among other components, the Offices of the President, Cabinet Affairs, Chief of Staff, Communications, First Lady, Counsel to the President, Intergovernmental Affairs, Legislative Affairs, Management and Administration, Operations, Political Affairs, Presidential Personnel, Public Liaison, Scheduling and Advance, Staff Secretary, Correspondence, Visitors, Policy Development, Domestic Policy Council, Environmental Policy, Council of Economic Advisors, National Economic Council, Assistant to the President for National Security Affairs and Deputy Assistant to the President for National Security Affairs, Assistant to the President for Science and Technology, and the Presidents Foreign Intelligence Advisory Board. The White House Office also includes task forces and working groups created by the President or an official in the White House, and reporting to the President or an official in the White House, including, for instance, the National Performance Review."

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Page 3

White House Referrals and Consultations

Counsel's Office as well."

"It is possible that a record originating in the White House Office (or in the Office of the Vice President--see below) will be one over which the White House Office (or the Office of the Vice President) has retained control, in which case it will not be an 'agency record' subject to the FOIA even though it is located by a federal agency in response to a FOIA request. Accord, e.g., Goland v. CIA, 6707 F.2d 339, 345-48 (D.C. Cir 1978) (honoring 'retention of control' by non-FOIA entity), cert. denied, 445 U.S. 927 (1980; see also Paisley v. CIA, 712 F.2d 686, 692-94 (D.C. Cir. 1983); Holy spirit Ass'n v. CIA, 636 F.2d 838, 840-042 (D.C. Cir. 1981). Any such records should be identified for special handling."

"2. Any record originating with the Office of the Vice President or any of its component offices, offices which likewise are not subject to the FOIA, should be forwarded for consultation purposes to the Office of the Counsel to the Vice President, Old Executive Office Building, Room 269, Washington, D.C. 20501."

"3. All records originating with other offices within the Executive Office of the President (EOP--including the Office of Administration; the Office of Management and Budget; the Office of Science, Technology and Space Policy; the Office of the U.S. Trade Representative; the Council on Environmental Quality; and the Office of National Drug Control Policy--should be forwarded to the FOIA officers of the relevant individual EOP offices. This, again, is for consultation purposes only; agencies remain responsible for responding directly to the FOIA requester once these EOP consultations have been completed. For your convenience, a contact list for these EOP offices is attached."

"4. Responses to FOIA requests for any classified White House records or records originating with the National Security Council should be coordinated with Ms. Nancy V. Menan of the National Security Council at the following address:

Director of Information Disclosure
Office of Information Disclosure
National Security Council
Old Executive Office Building, Room 392
Washington, D.C. 20506

Records originating with the Assistant to the President for National Security Affairs or his deputy should continue to be treated as records originating in the White House Office (see footnote 3 above)."

"If any question arises regarding these procedures, either generally or in any particular case, please do not hesitate to contact Margaret Ann Irving, Acting Deputy Director of the Justice

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White House Referrals and Consultations

Department's Office of Information and Privacy, at (202) 514-4251."

"Executive Office of the President--Agencies Subject to the FOIA"

Council on Environmental Quality
Deputy General Counsel
722 Jackson Place, N.W., Room 31
Washington, D.C. 20006

Office of Administration
Director, Administrative Services Division
Old Executive Office Building, Room 350
Washington, D.C. 20500

Office of Management and Budget
Deputy Assistant Director for Administration
New Executive Office Building, Room 9026*
Washington, D.C. 20503

Office of National Drug Control Policy
FOIA Officer
750 17th Street, N.W., 8th Floor
Washington, D.C. 20500

Office of Science, Technology and Space Policy
Executive Director
726 Jackson Place, N.W., Room 5013
Washington, D.C. 20500

Office of the U.S. Trade Representative
FOIA Officer
600 17th Street, N.W., Room 222
Washington, D.C. 20506

* OMB requests that records be forwarded to the attention of Darrell A. Johnson at this address.

F O I P A

M A N U A L

MEMO 87

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: **Witnesses - Protection of Information Provided in Confidence to the FBI by Persons Who Subsequently Testify in Criminal Trials**
Date: March 31, 1998

FBI records, such as FD-302s, often contain information provided on a confidential basis by persons who subsequently testify in criminal trials. The issue to be considered is whether Exemptions (b)(7)(C) and (b)(7)(D) protect the information provided by confidential sources who later testify in open court.

Exemption (b)(7)(C) protects information compiled for law enforcement purposes which, if disclosed, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The personal privacy interests inherent in that information must be balanced against the public interest in disclosure. Several courts have found, however, that there is no reasonable expectation of privacy in matters of a public record. Since testimony in open court becomes a public record, personal information given in testimony in open court may not be withheld under exemption (b)(7)(C). See, e.g., Kiraly v. FBI, 728 F.2d 273, 280 (6th Cir. 1984); Brown v. FBI, 658 F.2d 71, 75 (2d Cir. 1981); Cooper v. IRS, 450 F. Supp. 752, 754 (D.D.C. 1977).

An obvious problem in applying this rule is that FBI records may not reflect what testimony was given during a trial. If FBI records do not include a trial transcript, Exemption (b)(7)(C) may apply because there is no way for a PLS to determine from FBI records which information is in the public record.

b2 [REDACTED]

It should be noted that in applying the balancing test under Exemption (b)(7)(C), the interest of the general public must be served by disclosure and not the personal interest of the defendant/requester. Convicted requesters often make FOIPA requests in the hope of overturning their convictions: they argue that the public interest to be served by disclosure is the maintenance of the integrity of our criminal justice system. Courts have generally held that such a naked assertion is too uncertain to warrant the invasion of another's personal privacy rights. Brown, supra, 658 F.2d at 75.

As for exemption (b)(7)(D), the general rule is that "subsequent disclosure of information originally given in confidence does not render nonconfidential any of the information originally provided." Lame V. United States Department of Justice, 654 F.2d 917, 925 (3rd Cir. 1981);

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Witnesses - Protection of Information

accord Lesar v. United States Department of Justice, 636 F.2d 472 (D.C. Cir. 1980). However, there can be a waiver of confidentiality, either explicit or implicit, by the source. DOJ policy at this time is that a waiver will be found as to information which is given in testimony in open court. Once again, though, if FBI records do not include a trial transcript, Exemption (b)(7)(D) may apply because there is no way to determine from FBI records which information is in the public record.

Another point which needs to be made is that Exemption (b)(7)(D) does not depend on a balancing test or on the information provided: "Exemption (b)(7)(D) differs from other FOIA exemptions in that its applicability depends not on the specific factual contents of a particular document; instead, the pertinent question is whether the information at issue was furnished by a 'confidential source' during the course of a legitimate criminal law enforcement investigation." Once this question has been answered in the affirmative, it must be determined if it was provided under an expressed or implied promise of confidentiality and reviewed as such for any discretionary disclosure of information.

Finally, PLSs should be aware that under certain circumstances, Exemption (b)(7)(F) may be used even though (b)(7)(C) and (D) are inapplicable.

F O I P A
M A N U A L

MEMO 88

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: World War II Censorship Documents
Date: March 31, 1998

By letter dated 11/14/77, the National Archives and Records Administration (NARA) transmitted guidelines which are set out below, to be used by our agency and other agencies to review and process World War II censorship documents or documents that contain information taken from censorship documents. It is not necessary to refer censorship documents to NARA. We process them using the following NARA guidelines.

**Guidelines for Declassification and Release
of World War II Censorship Documents**

1. Coverage: These guidelines may be applied to:

(a) Censored communications and information derived therefrom whether from mail, cable, radio or other means of communications, passing between the United States and its territories or possessions and any foreign country or touching the territory of the United States at any point while in transit from one foreign country to another.

(b) Censorship activities carried on by the War and Navy Departments from December 8, 1941 and the Office of Censorship from March 15, 1942 through August 15, 1945.

(c) Except for those portions of RG 216 (Records of the Office of Censorship) which were placed under seal by President Truman in 1945, these guidelines may be applied to all censored communications and related documents and/or information derived therefrom in documents found in government agency records and in donated historical materials.

2. Security-classified information: All national security-classified information in censored communications covered by this guideline which was originated by the military departments or the Office of Censorship is automatically declassified unless it contains information categorized under paragraphs (a), (b), and (c) of this section. Information in these three categories will be referred to the Director, Records Declassification Division, National Archives and Records Service, for further action.

(a) Information concerning communications intelligence or cryptography and their

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World War II Censorship Documents

related activities.

(b) Information concerning the intelligence method of secret writing, microphotography and their detection.

(c) Information concerning foreign governmental censorship activities as disclosed by U.S. liaison with foreign censorship agencies and not previously declassified and released.

3. Unclassified and declassified information in censorship intercepts and similar documents: Information in censored communications and related documents covered by this guideline that clearly identifies living individuals or organizations will normally be exempted from release in those cases where its disclosure would constitute a clearly unwarranted invasion of personal privacy [cf. 5 U.S.C. 552 (b)(6) and/or (b)(7)(C)]. Reviewers of documents covered by this portion of the guideline should determine whether the document contains information about a living individual which reveals details of a highly personal nature which the individual could reasonably assert a claim to withhold from the public to avoid a clearly unwarranted invasion of privacy. Such information may be disclosed, however, to the individuals who were parties to the communication or their authorized representatives. Further, segregated portions of a record document requested under the Freedom of Information Act shall be provided to any person requesting such record after deletion of the portions which are exempt under this guideline. Information which may be exempted from such release may be further defined as:

(a) Information clearly identifying living individuals or organizations whose communications were intercepted, were the object of surveillance or were of particular interest to the intelligence agencies of the United States or its Allies, including the following:

(1) Originals, photocopies, transcripts or extracts from intercepted communications;

(2) Daily reports (also known as "Dayreps") which were Office of Censorship messages to stations providing background information on persons and organizations of interest to the Office of Censorship;

(3) Special watch instructions (also known as SWIs) which were instructions or supplemental information on particular persons, addresses, organizations, etc., whose communications are to be intercepted;

(4) Watch lists/flash lists which are lists of persons, organizations, addresses, etc., with indicator of subject interest, whose communications are to be intercepted, including proposed entries and deletions;

(5) White lists which are names of persons whose communications were to be bypassed without examination including entries and deletions;

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World War II Censorship Documents

(6) Border watch/flash lists which includes names of persons whose communications across the U.S. borders were of particular interest to a local censorship station, including entries and deletions thereto.

(b) Information clearly identifying living individuals or organizations involved in either complaints or recommendations arising out of such complaints about carrying out the specific provisions of the Code of Wartime Practices for the American Press and Broadcasters and not previously wholly releasable.

F O I P A
M A N U A L

MEMO 89

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: COINTELPRO (Counter-Intelligence Program)
Date: March 31, 1998

Description of COINTELPRO

The FBI's Counterintelligence Program, widely referred to as COINTELPRO, was the overall name for numerous programs of disruption, dirty tricks, and other projects undertaken by the FBI against individuals and organizations under investigation by the FBI. One such organization was the Communist Party USA. Through a variety of techniques, such as anonymous letters and mailings, these activities caused unexpected consternation and disruption among the members. At times, the more sophisticated techniques and activities exposed and neutralized the communists and caused defections or expulsions within the Party ranks. COINTELPRO activities were formalized in 1956 and was discontinued in 1971.

In 1978, the Department of Justice, Office of Professional Responsibility completed the COINTELPRO Notification Program which sought to notify 527 individuals (61 of whom the program failed to locate) that they could receive information on COINTELPRO actions against them, however, many people besides the 527 were targeted under COINTELPRO.

Procedures on Handling FOIPA Requests Involving COINTELPRO

When a COINTELPRO action was conducted against an individual or organization, appropriate correspondence was inserted in one of the COINTELPRO files. A copy of the correspondence may, or may not, have been designated for the main substantive file on the individual or organization. The name of the individual or organization may, or may not, have been indexed depending on the circumstances and the action of the employee processing the mail.

As there are an estimated 50,000 or more pages in the twelve COINTELPRO files, it would be impractical to conduct a page-by-page review for a particular subject. Therefore, when a FOIPA requester indicates in the request letter that the subject of the request was a target of COINTELPRO activities, our search of FBIHQ files should be limited to a review of: 1) the main substantive file of the requesting individual or organization and 2) any main file equivalents which indicate the individual or organization has been indexed in any one of the twelve COINTELPRO files. The twelve main file equivalent COINTELPRO files are:

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COINTELPRO (Counter-Intelligence Program)

Communist Party	Bufile: 100-3-104
Socialist Workers Party	Bufile: 100-436291
White Hate	Bufile: 157-9
Black Nationalist	Bufile: 100-448006
New Left	Bufile: 100-449698
Special Operations	Bufile: 105-174254
Soviet-Bloc	Bufile: 65-69260
Border Coverage	Bufile: 100-434445
Yugoslav	Bufile: 105-190290
Cuban	Bufile: 105-99938
Puerto Rican	Bufile: 105-93124
Hoodwink	Bufile: 100-446533

If a "no record" response is going to be given to a requester who has indicated he may have been the target of a COINTELPRO action, the following language should be used:

"A review of the appropriate records pertaining to COINTELPRO actions was conducted and no indication that you were ever the target of a COINTELPRO action was located."

NOTE: If FBI records indicate a COINTELPRO action was not reviewed in accordance with the Attorney General's notification program regarding COINTELPRO activities, then notice should be sent to the attention of the Counsel, Office of Professional Responsibility, Room 4304 - MJB at the Department of Justice.

CLASSIFICATION MATTERS CONCERNING
COINTELPRO MATERIAL

During a review of previously processed material located in the FBI FOIPA Reading Room, it was determined that there were some instances where the Reading Room copy and the original file copy were marked differently as to classification.

In order to ensure that COINTELPRO material processed under FOIPA, litigation or any other purpose, is consistent with material previously released and currently located in the FBI FOIPA Reading Room, a memorandum is being placed as a "Top Serial," not to be serialized, in each of those original COINTELPRO files. PLSs processing material from these files are placed on notice that the Reading Room copy must also be reviewed to insure both are marked in a consistent manner. When such a review is completed, a notation must be made on the original that it has been compared to the Reading Room copy.

F O I P A

MEMO 90

M A N U A L

To: All FBI FOIPA Personnel
From: J. Kevin O'Brien
Subject: Department of the Army
Date: March 31, 1998

Army Intelligence Agency (AIA)

This following instructions set forth procedures for the handling of referrals to the Army Intelligence Agency (AIA) in which classified information is involved.

(1) If documents classified "Top Secret" or "Secret" are to be referred to the AIA, receipts should be attached indicating among other required information the name and telephone number of the FBI employee involved. Receipt forms are maintained by the Document Classification Unit (DCU).

(2) Regarding Army documents in FBI files referred to the Army for handling and direct response to the requester, the PLS should specifically request in the referral letter that the FBI be notified of any classification changes. Upon receipt of the Army's notice of a classification change, the material should be forwarded to DCU where the changes will be noted on the FBI file copies of the Army documents. After those changes are noted, the photocopied material furnished by the Army should be destroyed.